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S. Hrg. 99-402 Pt. 2

Senate Hearings

Before the Committee on Appropriations

ORIGINAL

COMPLETED

Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations

Fiscal Year 1986

99*th* CONGRESS, FIRST SESSION

H.R. 2965

Part 2—(Pages 1–665)

- COMMISSION ON CIVIL RIGHTS
- COMMISSION ON SECURITY AND COOPERATION IN EUROPE
- DEPARTMENT OF JUSTICE
- EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
- JAPAN-UNITED STATES FRIENDSHIP COMMISSION
- LEGAL SERVICES CORPORATION
- SECURITIES AND EXCHANGE COMMISSION
- THE JUDICIARY

S. Hrg. 99-402 Part 2

DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1986

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 2965

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1986, AND FOR OTHER PURPOSES

(Part 2—Pages 1-665)

Commission on Civil Rights
Commission on Security and Cooperation in Europe
Department of Justice
Equal Employment Opportunity Commission
Japan-United States Friendship Commission
Legal Services Corporation
Securities and Exchange Commission
The Judiciary

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1986

WEDNESDAY, APRIL 17, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:35 a.m., in room S–146, the Capitol, Hon. Paul Laxalt (chairman) presiding.

Present: Senators Laxalt, D'Amato, Rudman, Specter, Hollings, Chiles, Bumpers and Lautenberg.

DEPARTMENT OF JUSTICE

STATEMENT OF THE HONORABLE EDWIN MEESE III, ATTORNEY GENERAL

ACCOMPANIED BY:
- W. LAWRENCE WALLACE, ACTING ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
- JOHN R. SHAFFER, DIRECTOR, BUDGET STAFF
- ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE
- NORMAN A. CARLSON, DIRECTOR, FEDERAL PRISON SYSTEM

BUDGET REQUEST

Senator LAXALT. The subcommittee will come to order.

Today we will review the fiscal year 1986 budget requests for the Department of Justice, requests which total just over $3.8 billion. Appearing on behalf of the Department is the Attorney General, the Honorable Edwin Meese.

Before we begin, General, I want to tell you what I would like to focus on today. As you well know, I totally support the President's efforts to reduce the deficit. However, law enforcement is a uniquely governmental function and obviously cannot be left to the private sector. I would hate to see any backsliding occur on the excellent law enforcement record of your Department that has been established over the last several years.

This committee needs your assurances that this budget provides you with the resources that you need. We will have a number of specific questions on this subject after you have completed your opening remarks.

INTRODUCTION OF ASSOCIATES

I would like to have you introduce your colleagues, if you will, and proceed in any fashion you desire.

Are there any opening statements other members have?

Senator HOLLINGS. Those are mighty good-looking colleagues [laughter] since General Meese, is all alone at the table.

No, I have no statement. Thank you, Mr. Chairman.

Mr. MEESE. Mr. Chairman, we have several members of the Department of Justice that are here with us this morning, including the Director of our Bureau of Prisons, Norm Carlson; Al Nelson, the Commissioner of the Immigration and Naturalization Service; Phil Brady, Acting Assistant Attorney General in charge of our Office of Legislative and Intergovernmental Affairs; and Larry Wallace, Acting Assistant Attorney General for Administration, as well as their deputies and assistants.

I appreciate this opportunity to come before the committee this morning. You have copies, I believe, of a prepared statement which I will paraphrase as I go forward in the interest of time.

First, Mr. Chairman, let me say without qualification, in response to your basic question, that the resources which have been asked for by the Department of Justice will be adequate to carry out the mandate we received from the President as well as our statutory and other responsibilities.

We feel that over the course of the past several years, as you will see from my prepared remarks, the resources devoted to law enforcement by this administration have been a top priority, the top priority, in terms of domestic affairs, and that will continue to be the case under my leadership in the Justice Department.

OPENING STATEMENT

Turning now to the prepared statement, which I will summarize for you, although I was not present in the Department at the time this budget was formulated in its detail, I have become familiar with it and thoroughly subscribe to it. I fully support the initiatives that the President has proposed for the Justice Department. I have had the privilege over the past 4 years to have worked as a member of the Cabinet Council on Legal Policy and the Cabinet generally with the Attorney General in formulation of the policies which underlie the particular proposals which are involved in this budget.

BUDGET GOALS

The budget maintains our commitment to strengthen the important law enforcement functions, including the enforcement efforts that have been directed against drug trafficking, illegal immigration, and threats to our national security. A significant portion of this budget will supply for the first time year-long funding for the implementation of the Comprehensive Crime Control Act of 1984, which we consider one of the most important pieces of law enforcement legislation ever enacted by the Congress. This will include such initiatives as the bail reform program, drug diversion, and the Assets Forfeiture Fund, which we feel is an increasingly important part of our activities against organized crime and drug enforcement. We will also continue to expand our prison facilities and will activate a new detention center for illegal aliens in 1986. We also have funds included in this budget to assist State and local criminal justice projects concentrating on those projects which in the past have proved to be the most successful. Many items in the 1986 budget extend programs for which we have asked supplemental funding in 1985 and will annualize these items on a full-year basis. I will try to emphasize those as we go through this budget.

AREAS OF BUDGET INCREASE

I think it is important to note, Mr. Chairman, and members of the committee, that this budget request represents an increase of 62 percent over the Justice Department's budget of 1981. Most of this has been in the law enforcement area, primarily criminal law enforcement, particularly emphasizing the drug trafficking and organized crime. An example of this was the most recent indictment of the people in New York who were acting as part of a commission which virtually controlled the nationwide organized criminal network. One of the things that is particularly impressive in that particular indictment is that it not only represented a targeting of the resources of the Federal Government on top-level organized crime figures, but it also represented a cohesion and cooperation among law enforcement agencies at all levels. It is the first time in more than a quarter of a century that I have been involved in law enforcement that I can remember a joint press conference announcing indictments in which there was an active and wholehearted appearance of the New York City police, the U.S. Attorney, and representatives of the Federal Bureau of Investigation. I think it is a major step forward, which is important in terms of budget aspects because it represents not only the fact that we are spending more money on criminal law enforcement, but we are getting better results because we are coordinating the efforts of all levels of government.

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES

The Organized Crime and Drug Enforcement Task Forces are indicative of this type of coordinated law enforcement. I have just returned from El Paso where we had the first meeting, since they were organized, of the leaders of these Organized Crime Drug Enforcement Task Forces. I think the work that has been conducted in this very short time is already very impressive.

The joint activities of the FBI and Drug Enforcement Administration provide another example of efforts that this budget will support. The granting of concurrent jurisdiction to the FBI for narcotics investigations, particularly those involving wiretaps and the more sophisticated type of investigative methods, has proved to be extremely successful. We have been able to expand the number of investigations utilizing electronic surveillance, which is one of the key elements of an investigative activity in terms of organized crime and drug trafficking.

The very successful efforts that we have made in the law enforcement field have been due to a great extent to the fine support which the Department has received from your subcommittee, and we appreciate this continued support. We want to be available to you to explain any matters that might be of concern or of interest to you. But I think that it is very significant that the increased resources have had a disproportionately large impact as far as criminal activity is concerned.

Today we are requesting a budget for fiscal year 1986 of $3.8 billion and 62,281 positions. This is a net increase of 455 positions and $34 million over the resource level anticipated for 1985.

However, I would suggest that the result of this budget will be far greater because, while this is a net increase, at the same time we have materially cut back overhead and administrative expense and plowed this back into operating expenditures so that we can be more effective in the operational impact of the Department, particularly in the criminal enforcement area.

CCCA REQUEST

The President's budget requests $60 million in 1986 to implement various provisions of the Comprehensive Crime Control Act of 1984 which will provide full-year funding for 837 new positions, for which the recruiting and placement will actually begin during this fiscal year. Nine appropriations in our Department share in the funding, going from U.S. attorneys and marshals, right through virtually all the law enforcement functions of the Department.

We are particularly highlighting in this area the Assets Forfeiture Fund because this is one of the very important aspects of the Comprehensive Crime Control Act which not only will be implemented during fiscal year 1985 but was particularly mentioned by the heads of our Organized Crime Drug Enforcement Task Forces when we met with them the last couple of days.

The Department recently established the Crime Victims Fund which will be managed by the Office of Justice Programs. As the receipts from the fines and special assessments materialize, we will be able to distribute up to $100 million to the States for the compensation of victims of crime as well as victim witness assistance programs.

OTHER BUDGET REQUESTS

I could go on with the details here, but I think that you have them in the prepared statement. Let me point out one particular thing. For the third consecutive year, in a matter that goes beyond our domestic law enforcement in terms of its impact, we are requesting resources to continue strengthening the FBI's foreign counterintelligence program.

We also have funds to expand and improve the FBI's training facilities at Quantico. We are asking for $67 million for the Office of Justice Programs for assisting State and local governments. This will include not only general crime programs but, in this particular funding, also juvenile justice programs.

We have a provision in the budget for continuing our expansion and modernization of our Federal Prison System. The statistics are presented in the report. We feel this is another step to continue our efforts to provide adequate prison space.

We do plan to activate the Oakdale, LA, Alien Detention Center early in fiscal year 1986 which would allow additional bed spaces for the housing of longer-term illegal alien detainees under custody of the Immigration and Naturalization Service.

We are also continuing and expanding our program for additional cooperative agreements with State and local correction facilities which we find is not only a very cost-effective way of providing places for the detention of Federal prisoners but also a catalyst for expansion of local jail facilities within the various areas where we house our prisoners.

I think, Mr. Chairman, that that highlights some of the major aspects of this budget. I know you have gone into detail as to the budget itself. I would be glad to answer questions in more detail on those matters which are of particular interest to this committee.

Senator LAXALT. I thank the General.

[The statement follows:]

PREPARED STATEMENT OF EDWIN MEESE, III
ATTORNEY GENERAL

Mr. Chairman and Members of the Committee:

I am pleased to be with you today to discuss the 1986 budget request for the Department of Justice. As you know, this is my first opportunity to testify before this Committee as Attorney General and I am looking forward to working with you, Mr. Chairman, and the other members of the Committee in the years ahead.

Though I was not at the Department of Justice during the time in which this budget was formulated, I have followed the programs and activities of the Department closely for the past four years and I fully support the initiatives that the President has proposed for the Justice Department.

This budget maintains our commitment to strengthen important law enforcement functions including enforcement efforts directed against drug trafficking, illegal immigration and threats to our national security. A significant portion of the budget increase will provide full year funding for initiatives required to implement the Comprehensive Crime Control Act of 1984 such as the bail reform, drug diversion and Assets Forfeiture Fund provisions of the Act. The Department will continue to expand federal prison facilities and activate a new detention center for illegal aliens in 1986. The proposal before you also contains funds for a program to assist State and local criminal justice projects, some of which can be targeted toward juvenile justice initiatives. Many items in the 1986 request extend activities which will begin in 1985 through proposed supplemental funding. As I discuss the 1986 request in greater detail, I will emphasize those items which we intend to implement during this year.

This request represents an increase of 62 percent or

$1.46 billion, over the Justice Department's budget of $2.34 billion in 1981. The lion's share of this four year increase has been directed toward the criminal enforcement activities of the Department such as the President's fight against organized crime and drug trafficking which continues to gain momentum. We are encouraged by the recent indictments of five men in New York who were acting as part of a commission which controlled an organized criminal network. We look forward to many more indictments of this nature in the years ahead.

The Organized Crime Drug Enforcement Task Forces are indicative of the type of coordinated law enforcement activities that are contributing to this success in our constant struggle to secure our citizens from organized criminal elements, narcotics traffickers and the related violence they spawn.

The joint activities of the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) are another prime example of the efforts that this budget will support. The granting of concurrent jurisdiction for narcotics investigations to the FBI has resulted in approximately 800 joint DEA/FBI investigations with 400 Title III wire tap investigations since 1982. These programs have opened the door to the higher echelons of drug trafficking organizations. Our successes in these areas have so angered the leaders of these organizations that they have, in essence, declared war on the DEA and other agencies involved in these enforcement activities. It is at this level that federal enforcement efforts will have the most damaging effect on these criminal organizations. It is also at this level that pressure must continue to be applied against these organizations in order to dismantle the infrastructure upon which they are based.

These and other efforts have been successful in a significant part due to the support given by this Committee and Congress. We must continue to join forces in countering the threats to our domestic security mounted by these organized criminal elements. This budget will continue to support our efforts in these most important enforcement activities.

Mr. Chairman, I am requesting today a budget of $3.8 billion and 62,281 positions. This is a net increase of 455 positions and $34 million over the resource level anticipated for 1985.

Officials from the Department will be available to answer specific questions you may have concerning programs under their direction during other hearings. However, I would like to outline some of the most significant initiatives of this request.

The President's budget requests $60 million in 1986 to implement various provisions of the Comprehensive Crime Control Act of 1984. This will provide full year funding for 837 new positions for which recruiting and placement will begin in 1985. Nine appropriations of the Department of Justice will share in the requested funding: U.S. Attorneys and Marshals, Federal Bureau of Investigation, Drug Enforcement Administration, Federal Prison System, Office of Justice Programs, Criminal Division, Fees and Expenses of Witnesses (for Protected Witnesses), Assets Forfeiture Fund, and General Administration. Many of the enhancements I will be addressing are based on implementing the various aspects of this significant piece of legislation.

In response to this legislation, the Department recently established the Crime Victims Fund which will be managed by the Office of Justice Programs. As receipts materialize, the Department is authorized to grant up to $100 million in 1985 and 1986 for State, local, and federal victims programs. The Fund's primary source of receipts is criminal fines collected from persons convicted of offenses against the United States. Federal victims programs may be allocated up to five percent of the Fund's receipts.

In order to implement the provisions of the Comprehensive Crime Control Act of 1984 which established the Department of Justice Assets Forfeiture Fund, the Department is requesting authority to use up to $5 million of these proceeds for governmental expenditures in 1985 to begin a more aggressive forfeiture campaign. For 1986, we are requesting authority to utilize up to $10 million of proceeds for governmental expenditures relating to these activities.

This is an important continuation of the Department's efforts to combat two of the most serious crime problems facing the country: racketeering and drug trafficking. By attacking the economic power that sustains criminal enterprises and, in turn, using the very same resources against these criminals, the Department will strengthen its ability to dismantle major criminal organizations without diverting enforcement resources to bear the expenses of storage, care, and sale of forfeited assets. State and local law enforcement agencies, which assist in drug asset forfeiture activities, will also benefit from the seizures as a result of the law.

The 1986 request for U.S. Attorneys and Marshals includes $22.5 million in support of the Bankruptcy Amendments and Federal Judgeship Act of 1984 which authorized the creation of 85 new Federal Judgeships. These funds will provide full year funding for the 457 positions we expect to fill this year. This will allow us to present cases before the new judges, to provide security within the courtrooms and to handle federal prisoners. For the U.S. Attorneys, $20.1 million will provide full year funding for 199 Assistant U.S. Attorneys and 199 support personnel. The remaining $2.4 million will provide funding for 59 additional Deputy U.S. Marshals.

For the third consecutive year, the Administration is requesting resources to continue its planned strengthening of the FBI's Foreign Counterintelligence program.

The FBI is also planning to reallocate permanently $1.7

million to continue operation of the National Center for the Analysis of Violent Crime. The Center was established in 1984 with resources provided by various components of the Department of Justice. It is anticipated that the Center's research will continue to focus on unusual crimes such as serial murder, with findings to be disseminated to the national law enforcement community through training and direct operational support. The 1985 appropriation includes funding for site preparation for a dormitory and classroom facility at the FBI Academy in Quantico, Virginia. An uncontrollable increase of $10.3 million is requested to permit construction of this 250 bed facility in 1986. Finally, the requested increase of 371 positions and $34,535,000 will be directed toward the FBI's highest priority field investigative programs.

For 1986 we are seeking a total of $67 million for State and local assistance as authorized in the Comprehensive Crime Control Act of 1984. This will permit the new Office of Justice Programs to provide about the same level of funding as is available in 1985. Eighty percent, which equates to $53.6 million, will be available for formula grants and twenty percent, or $13.4 million, will be available for discretionary grants. The State and local assistance program is principally targeted at specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on violent crime and serious offenders.

Program increases totaling $35,665,000 are requested in the 1986 budget for federal prison expansion and modernization. A year ago, the federal prison population was 31,172 and the federal prison system was experiencing a 24.4 percent rate of overcrowding. The federal prison population, as of March 3, 1985, was 33,427, which represents a 7.2 percent increase over last year, and the federal prison system is currently experiencing a 34.1 percent rate of overcrowding. For 1986, the average daily population of the federal prison system is expected to reach 33,790.

This continuing growth in the federal prisoner population results from the vigorous investigation and prosecution of serious federal offenders under the Reagan Administration.

The 1986 request includes: (1) $16.5 million to construct 286 new bedspaces at five existing federal prisons; (2) $5.3 million to improve inmate living conditions at existing institutions; (3) $3.8 million to expand core facilities, such as food and medical services facilities, to accommodate increasing population levels; (4) $4.4 million for major renovation projects and to initiate the first phase of a series of fire safety improvement projects at several institutions; and (5) $5.7 million to continue converting and renovating the Leavenworth, Kansas, and Atlanta, Georgia, penitentiaries to smaller, more modern institutions.

The Federal Prison System plans to activate the Oakdale, Louisiana, Alien Detention Center early in fiscal year 1986. The Center will add 1,000 bedspaces for the housing of longer-term illegal alien detainees under the custody of the Immigration and Naturalization Service. In addition, prior construction projects will result in the activation of 1,148 bedspaces at 10 existing federal prison system facilities.

We are also requesting $5 million for additional cooperative agreements with State and/or local correction facilities. Since the program's inception in 1982 and including the proposed 1986 funding, about $55 million will have been provided to State and/or local governments for rehabilitation, modernization and construction of prisoner bedspace. With these cooperative agreements, the U.S. Marshals Service estimates that through fiscal year 1986 nearly 3,400 guaranteed bedspaces, primarily in local jails, will have been secured for the housing of federal prisoners.

Though the increases proposed in 1986 generally focus on the criminal enforcement activities of the Department, this request also supports the continuation of efforts in many other critical programs. We are continuing our efforts to protect the public treasury from fraud and abuse and are proud of our past and present debt collection program. Our antitrust activities support the Administration's efforts at deregulation and we must view future decisions with respect to the promotion of effective competition in the world market. As I have recently stated, the Department will continue the energetic and vigilant defense of the civil rights of all Americans. We will also continue our expanded enforcement of laws designed to protect our environment. These are just a few of the examples of the significant civil litigation issues that the Department is routinely involved in and upon which we will continue to place emphasis in the future.

Congress has provided the Department with resources to address issues such as these over the past three years and I believe this investment of personnel and improved technology will be sufficient to allow us to address these important activities during 1986.

The Department's 1986 budget reflects management savings in a number of areas. There is a reduction of about $69 million related to the Administration's proposal to reduce federal employees salary by five percent beginning in January 1986.

The 1986 budget also reflects savings of 50 positions and $1.6 million in the Immigration and Naturalization Service (INS) related to the Grace Commission's recommendation that INS' Central and Regional Office administrative staffing be reduced. The Administration, in consultation with the Attorney General and the Commissioner of INS, agreed to a two-year phased reduction plan totaling 200 positions and $6.4 million. Congress affirmed the first phase of the reduction (150 positions and $4.8 million) which was proposed in the President's 1985 budget.

The 1986 budget reflects an additional $17.4 million in management and administration reductions. These overhead cost reductions are based on Government-wide analyses that show significant opportunities for cost-cutting in overhead program areas.

Funding for juvenile justice projects is available in our Office of Justice Programs appropriation. Accordingly, we propose to eliminate the separate line item funding in 1986 (67.6 million). We continue to propose that the Regional Information Sharing Systems be funded by organizations benefitting from their activities rather than from Department resources. Funding has not been requested for the U.S. Trustee program ($9.4 million).

Based on recommendations contained in a General Accounting Office report issued in 1984, we are proposing a reduction of $5 million in directly appropriated funds for INS inspectional overtime at airports. This funding will be supplanted by $5 million in reimbursements from the air carriers for INS inspectional overtime and this reduction will not have a detrimental effect on the Inspection program.

Executive Order 12435 specified that, unless otherwise extended, the President's Commission on Organized Crime will expire on July 28, 1985. The President has signed an extension of this Executive Order which extends the Commission until April 1, 1986. A supplemental appropriation request of $635,000 now pending should enable the Commission to sustain its ongoing work through the end of 1985.

Mr. Chairman, I believe this budget request will enable the Department of Justice to continue aggressive programs directed at combatting all forms of crime. This request represents a modest increase over the 1985 budget but this increase is necessary to meet our law enforcement needs. I am looking forward to working with this Congress toward achieving the goal of ensuring the safety of the American people.

NEED FOR ADDITIONAL DRUG RESOURCES

Senator LAXALT. We have had a special request of the subcommittee by Senator D'Amato of New York that he be permitted to ask certain questions of the General. I certainly have no objection, if Senator Hollings doesn't.

Senator HOLLINGS. No, I don't.

Senator D'AMATO. Thank you, Mr. Chairman.

General, let me also commend you and the Department for many of the new initiatives which you have undertaken. I think you have made a great and substantial impact, particularly in the area of drugs and organized crime, as you made reference to the impact in the New York area in particular and the recent indictments that have been announced.

Having said that, I am wondering what if you were to be provided with additional resources, additional drug enforcement agents? I had the opportunity to be in the Albany area where one of the largest processing mills to date with respect to cocaine, which they are now processing in the United States was uncovered.

We only have seven agents in that area of the State, working 3 full days, some of them, without rest, around the clock. You are making terrific efforts, but I see in spite of our having some additional resources, they are at a breaking point.

Couldn't we really in a much more effective way use additional resources in DEA and additional prosecutors? Because the DEA and FBI are making these cases. I detect that our prosecutors and our resources are being stretched beyond their capacity and we really could use these resources.

Mr. MEESE. Senator, I would prefer to remain with the request that is in the budget. I think within those resources we have asked for we can allocate the manpower within the Department to take care of unusual situations such as those you mentioned.

I think one of the things we have now is the flexibility with the FBI involved that for limited periods of time, we can put large amounts of manpower into particular investigations. And I think that one of the things that we need to do during fiscal year 1986 is to assimulate the rather large increases in personnel we have had over the last 6 years; as I mentioned, some 62 percent.

Most of this, if not all of it, has gone into agents, U.S. attorneys and support personnel. I think that we will be able to handle whatever the needs are in any of these areas, particularly the New York area. As a matter of fact, we discussed this in the course of the past few days as to how we might better handle the situation there, which is one of our major trouble spots in the country.

So I think we can do that within the resources asked for.

BUDGET CUTS FOR FBI AND DEA

Senator HOLLINGS. If the Senator would yield, the Senator from New York is on a real point there. We started off, and I felt sorry for the last Attorney General in 1981 because while the President was talking about the "thin blue line," the FBI was being cut 6 percent and the DEA, 12 percent. We heard that down in Florida the DEA was putting on cake bakes in Fort Lauderdale, in order to get enough money to put enough gas in their cars to go make arrests. He came in with a big extravaganza of how they stepped up drug enforcement. By the same token, we have increased in the last few years, to stay on in Florida. And in South Carolina we only have 12, for the whole coastline plus the ones assigned up in Columbia.

We are short-armed. We need to have you reconsider that along with what Senator D'Amato is pointing out. I am sure the Senator from Florida agrees. It is sort of an uphill battle down there. We are not on top of it yet.

One of the big areas of need is to increase the DEA agents. I don't see how you can do it with what you have.

Senator LAXALT. Is it a matter of overall strength, which I think the General has indicated, or a matter of allocation? Do you have the flexibility——

Mr. MEESE. We have the flexibility.

Senator LAXALT. —in order to make different allocations so these deficiencies can be cured?

Mr. MEESE. We can allocate in particular areas, but we have to remember, the DEA is not in the retail business; they are in the wholesale business. They are working major cases with major traffickers.

In addition to the agents we have assigned to those areas, we have the regional task forces and they work on the basis of these major cases as well. We also have the ability to supplement the DEA agents with FBI agents on particular investigations, which is what we do.

So I think the important thing now is to manage properly the expanded resources we have. In the DEA, for example, from 3,900 positions just 4 years ago, we now have in excess of 4,200 positions.

Senator HOLLINGS. 4,200 now?

Mr. MEESE. That is in fiscal year 1985 enacted. I am talking about total personnel.

Senator HOLLINGS. Excuse me. We are looking at your figures for agents, General Meese.

DEA BUDGET

Senator CHILES. The DEA budget has been flat in the last 2 years. $336 million, in 1985 $345 million, in 1986. They made a budget request for $391 million. We are giving them all kinds of different roles, new responsibilities.

Senator D'AMATO. I think it would be very helpful to the committee, Mr. Chairman, if the Attorney General could possibly before next week's meeting with the DEA Acting Administrator give us a breakdown as to the actual numbers of DEA agents on board. 2,200 have been authorized.

I think it is important, Mr. Attorney General, to find out exactly how many are on board because there is a possibility we are below that 2,200.

Mr. MEESE. I don't know the exact number we have on board today, but I know we have been recruiting up to our authorization. It is our desire to have all of them fully on board.

NEED TO WIN DRUG WAR

Senator D'AMATO. Making the second point, without beating it to death, I have spent a good deal of time in this area, particularly in this area of drugs. We are losing this battle. I think our agents and our U.S. attorneys and the FBI are doing an incredible job. But I tell you, I see the men in the field. They need these additional resources. I think for a rather modest increase we can continue the effort and really be so much more effective in the drug money laundering cases that need not only the follow-up but the prosecutions, the use of the seizures, which really require manpower for prosecutors.

Mr. Attorney General, you have asked for an increase of only 199 assistant U.S. attorneys. I think by increasing the number of U.S. attorneys out there, to help DEA agents and FBI make their cases, it is going to pay great, great, great dividends. I understand budget constraints, but I think just from the criminal forfeiture side you are going to be able to more than offset the cost of those.

I have a number of questions. I am wondering, Mr. Chairman, because I don't want to monopolize this, if I might not submit them for the record.

Senator LAXALT. Sure.

Mr. MEESE. Certainly.

SUCCESS IN WINNING DRUG BATTLE

I would like to comment and take issue with one statement. We hear a lot of loose talk about losing the drug battle. I think that is false. I think we ought to make it clear right now we are not losing the drug battle. Every indicator we have shows we are making tremendous strides, for the first time in history, we are making tremendous strides. We have record seizures of narcotics. We have record arrests. We have record convictions. We are vitiating drug traffickers by the work of drug agents overseas. The traffickers are being hurt. We are having threats against our U.S. attorneys. It is not a sign we are losing the battle. It is a sign we are making significant inroads. For the first time we are now seeing, going into the third year, that the percentage of young people experimenting with drugs is going down rather than up. We think this is significant. The demand side is equally important as the supply side as far as narcotics is concerned.

To give the public the impression we are losing the battle we can't win, we ought to give up, is absolutely wrong. I think we ought to let people know we are making gains and starting to win the battle. But we need to make some efforts. It is important to get that across.

DRUG WARS STILL FAR FROM WON

Senator **Chiles**. I think it is important to get the message across we are not losing the battle, but I think it would be very false to put the message out we are winning the battle. The price of cocaine in this country is down and you can find it on any schoolground. You can find it anyplace. There is more marijuana grown in this country than is getting shipped in. We are now worried about designer drugs, in which a chemist can change a couple of molecules of a drug and make heroin, make cocaine.

You have Brazil which has gone into cocaine production. We have five DEA agents in Brazil in one office, and they don't even have the NADDIS connected there, which is your computerized filing system.

So to say we are winning the battle——

Mr. **Meese**. Listen carefully, Senator. I said we are starting to win the battle. I think that is accurate.

Senator **Chiles**. I tell you, we have a hell of a long way to go in Florida before we can say we are winning the battle when we see the amount of drugs pouring in there.

Mr. **Meese**. I agree, Senator. But I think in Florida one of the things you would have to agree with is that homicides related to drug trafficking have gone down considerably. The fact that we are doing things with interdiction in preventing narcotics from reaching the Florida shores has been a major factor in the cutting down on the amounts of narcotics that would otherwise come into this country.

So I am not at all painting a rosy picture. I would agree we have a long way to go. That is why we are asking for these resources. That is why we are trying to utilize them better. But I think it is clear if we fit this into some kind of perspective and balance——

SENATE SOLUTIONS TO DRUG PROBLEM

Senator **Laxalt**. Let met ask Senator Chiles, who has been an active exponent of the whole problem, both in and out of the committee, what would you have the General do in relation to the budget or otherwise in order to expedite the war?

Senator **Chiles**. I think if you look at DEA and get out in the field and talk to any DEA agents, they are literally strained to the breaking point.

Senator **Laxalt**. Are we talking about money?

Senator **Chiles**. DEA asked for $391 million. The budget is $345 million. It is flat from what it was the year before. So they are a part of the overall budget constraint. Gosh, I am for constraining the budget, but it seems to me when you get into these law enforcement areas, that you are asking these people to do an awful lot and they are strained and strained and strained.

I don't think there is any doubt about it, we have pulled people out of the northeast setting up the South Florida task force. I was screaming and hollering for that. But that has thinned our resources in other places. We have done a better job in Florida, so what we have done now is we have spread the drugs. They are going into the southeast, into Texas. They are going into Mississippi.

Senator HOLLINGS. And South Carolina.

Senator CHILES. These guys are smart. They have tremendous assets and tremendous resources. They have the best communications equipment in the world. They have now the finest pilots in the world. I tell you, they would be better than the Israeli Air Force as far as pilots. You ask any of our Customs people or DEA people about them. We are a long way from being on top of it.

Senator HOLLINGS. Excuse me, Mr. Chairman, if you don't mind, because I have to go and attend another hearing.

This is one thing, General, you ought to look at. I am talking about Federal judges. They do not share the opinions expressed by you. This thing is still on the increase. DEA is shorthanded. And the one-line answer, so many answers, I don't want to oversimplify it—it is what the Senator from New York and Florida point out—we need more agents.

We are losing that battle in South Carolina. I am talking to our own Federal judges. It just keeps on coming, more and more, with all of those islands. You know the coastline of that area. They are coming from Florida up to our area. We just can't keep up with it. Twelve agents in the whole State, day and night, there is just no way in the world they can stay on top of it.

HEAVY WORKLOAD OF DEA AGENTS

Senator D'AMATO. General, if I might, we have engaged the enemy. We are doing that. I think for a long time we didn't. We are doing it in an aggressive manner. I am supportive of it.

Let me tell you, these young men and women out in the field are doing a hero's job. But they are working around the clock. They are working day in and day out. They need more manpower desperately.

I think that we have to continue that effort—because I left men who were out in the field 3 days without sleep. They want to win this.

Mr. Attorney General, just something additional: it is not a matter of reallocating because we do not want to take them from one area and into another. We are getting our fair share of our increase up in New York. I want you to know that: we received, I think, about 20 percent of the total new agents. We just need more.

I think the highest priority that this administration should place is in this area of drug enforcement and law enforcement. I don't want to leave a false impression. We are engaging them. I think we can win it with an allocation of some more resources.

RESALE PRICE MAINTENANCE

Senator LAXALT. Senator Rudman?

Senator RUDMAN. Thank you very much, Mr. Chairman.

Mr. Attorney General, the questions I have ask to are in a totally different subject. I am fully aware that having only been now in the

Department several months, it takes time to get up to speed. It may be because of the nature of my questions, which generally go into the resale price maintenance antitrust area, you may wish to answer for the record. As a matter of fact, if you feel you would like to expand any of these answers for the record, I would particularly appreciate it, but I am very anxious to have in this hearing record the current position of the Department of Justice.

I would start by asking whether or not Assistant Attorney General McGrath is still in the Department. I know he was planning to leave.

Mr. MEESE. He has left the Department. He left on the first of April. He went into private practice and we are in the process of finding his replacement.

Senator RUDMAN. I have a high regard for him. I think he did an excellent job. We did have some disagreements, but that is not unusual amongst people who have maybe different philosophies on antitrust.

I want to talk about resale price maintenance for a moment. As you well know, having been in the White House at the time, I managed to get through the Congress in 1983 an amendment, which I was reluctant to put forth, but under the circumstances did. That amendment precluded the Department of Justice from using money to overturn the per se rule, the longstanding per se rule on resale price maintenance. I didn't like to do that because there were constitutional implications involved there in terms of the Executive Branch, I thought. But I think in many ways Congress was forced to do it because of the then Assistant Attorney General for Antitrust.

In conversations with Mr. McGrath and your predecessors, although we have the votes to do that once again, and the President issued an Executive Order to implement that and clearly defining his constitutional understanding, we did not in fact put that on the bill last year, at the request of the administration.

Mr. MEESE. Right.

BUCKINGHAM V. ODOM

Senator RUDMAN. Now, currently, there is a case called Buckingham versus Odom which is pending in the U.S. Supreme Court. Your Department has been asked to file a brief in that case and the per se rule again is involved.

I guess my question is are we going to have another long battle to save the per se rule? What is the current position of the Department on that issue?

Mr. MEESE. Senator, I would like to answer on that particular case for the record. The Department has very carefully followed the original congressional enactment and subsequently the agreement that we had in the course of the last budget year. We have been very scrupulous about that.

As to the particular ramifications as it relates to this case, I would prefer to answer that for the record.

[The information follows:]

BUCKINGHAM V. ODOM

The Supreme Court has invited the Solicitor General to file an *amicus* brief expressing the views of the United States on the question whether the Court should grant the petition for a writ of certiorari filed in *Buckingham Corp.* v. *Odom Corp.*, Sup. Ct. No. 84–806. The Antitrust Division is currently studying the court of appeals' decision in that case and preparing a draft *amicus* brief. In accordance with the representations previously made to this Committee, the Department of Justice does not intend to use this case to urge the Supreme Court to overrule the *per se* rule against resale price maintenance as laid down by the Supreme Court in *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U.S. 373 (1911). We are still reviewing the record in the *Odom* case, however, and are not yet ready to conclude that on facts such as these it is appropriate to decide the case on a *Dr. Miles per se* rule.

RESALE PRICE MAINTENANCE CASE FILINGS

Senator BUMPERS. If I may, Warren. General Meese, if you would honor me with a copy of that because that goes to one of the questions I have.

Mr. MEESE. I would be happy to.

Senator RUDMAN. I have a series of questions on that. I will ask you the second one. I guess maybe I want someone in the Department to respond, and maybe Mr. McGrath can help you with this answer.

There were 18 complaints alleging RPM violations during the year. There was not a single case filed in 1984 by the Department. Now, it may be that some of those cases are still under investigation and maybe complaints may be filed, or it may be that the cases were found to be without merit for one reason or another.

I would like an answer, if I could, for the record as to not necessarily in great detail in each of the cases, but whether or not in fact there is the possibility of a case being filed.

Mr. MEESE. Fine. I will answer that.

There is one other possibility, Senator. That is that the alleged violators agreed to resolve it without actions going forward, which frequently happens in these cases.

Senator RUDMAN. That is also possible.

Last month we had Chairman Miller here from the FTC. I have to tell you as a former State Attorney General I always have had some problems in understanding the split jurisdiction in the Federal Government in antitrust. Maybe some day it can be fixed. I am not sure it is healthy that we have two separate agencies of the government.

I assume, without putting words in your mouth, you would just as well see only one agency of the government involved in antitrust.

Mr. MEESE. Senator, we are hardly in a position to complain about competition, are we. [Laughter.]

But seriously, we have I think a very good working relationship, and I must say that Paul McGrath contributed to this, the working relationship between the FTC and the Antitrust Division in the Department of Justice.

There is a general agreement that is worked out on a continuing basis so we don't have either duplication or conflict in the handling of cases. I think the present system has worked out pretty well.

Senator **RUDMAN**. He said when he was here as far as the FTC attitude, he had difficulty in this enforcement because of the *Monsanto* case. I assume you share that view. If you want to expand for the record, you may.

Mr. **MEESE**. I would be glad to do that. We don't have any testimony that appears to be contradictory to what Mr. Miller said.

[The information follows:]

RESALE PRICE MAINTENANCE CASE FILINGS

During calendar year 1984 the Antitrust Division received and considered a total of 18 complaints involving possible resale price maintenance. Although the Division filed no cases during calendar year 1984 alleging resale price maintenance, it has, as of March 13, 1985, authorized four formal investigations into possible occurrences of this practice. Because these matters are the subject of pending investigations, the Department cannot publicly comment on them. In addition, the Antitrust Division currently is pursuing one other complaint that may involve resale price maintenance.

VERTICAL RESTRAINTS GUIDELINES

Senator **RUDMAN**. The next question I am sure you cannot answer here in detail, but I think it is a very important one.

In January, your Department issued all of the guidelines that were long coming on vertical restraint. They purported to deal with nonprice vertical restraints. They do depart from existing law in several ways in that I think they made it more difficult for retailers to prove an RPM case.

The thing that bothered me is, to my knowledge, these guidelines were never put out for public comment by the bar generally who would want a comment. Do you have any idea why that was, that they were not put out for comment before they were released in final form?

Mr. **MEESE**. I don't know that because I was not in the Department at that time. I can speculate at least that it may be this was more of a codification of existing practices of the Department and that may be the reason. But I would be happy to inquire into it and let you know.

Senator **RUDMAN**. I would disagree with that. I know that you didn't say they were. I don't think they were a codification. I think they were fairly important, very thorough, well thought out, but in my view wrong. And I just wondered whether or not philosophically you might think something that important involving this subject, it might be good to put these things out for public comment. It might save you some future problems.

Mr. **MEESE**. I think as a general rule that is a desirable way to enact regulations or guidelines in this case. But I will look into it and find out what the reasoning was.

Senator **RUDMAN**. If you could answer that for the record also.

[The information follows:]

REVIEW OF VERTICAL RESTRAINTS GUIDELINES

The Justice Department does not believe that it would be appropriate to submit draft enforcement guidelines for public notice and comment. Such guidelines merely set forth the present antitrust enforcement policy of the Justice Department with regard to particular business transactions. They do not have the force and effect of law. In contrast, regulations promulgated by other agencies pursuant to public notice and comment requirements (under the Administrative Procedures Act or other statutes) generally do have the force and effect of law. Accordingly, the fact that other agencies' regulations are subject to public notice and comment requirements. The Justice Department has issued a number of enforcement guidelines and guides over the last two decades, including the 1968 Merger Guidelines, the 1977 Felony Sentencing Recommendation Guidelines, the 1977 Guide to International Operations, the 1980 Guide to Research Joint Ventures, the 1982 Merger Guidelines, the Revised 1984 Merger Guidelines, and the 1985 Vertical Restraints Guidelines. The Department submitted none of these guides and guidelines for preliminary public notice and comment, nor was it requested to do so.

REPEAL OF SECTION 7 OF THE CLAYTON ACT

Senator RUDMAN. The last question I have involves Secretary Baldrige who was here several weeks ago. In response to a question, he called for repeal of Section 7 of the Clayton Act, which of course allows the Attorney General to use the words of the statute to block mergers where "the effect may be substantially to lessen competition to tend to create a monopoly." He believes that certain mergers are going to have to be allowed and essentially disregard Section 7, considering the world markets we operate in presently. Do you share his view on that?

Mr. MEESE. No, I don't think I share his view. I share his ultimate view, his major view, which is that we have to analyze mergers.

There are other transactions similar in a way which address the problems of a global economy rather than limiting our scrutiny to what is happening within the boundaries of the United States. I do agree with him on that.

I also agree with him on the fact that we have to be sure what we are doing makes the United States competitive with other industrialized nations. I think we are in agreement on that.

I think that it is more a matter of how we arrive at those ultimate objectives. In that regard, I don't think it is necessary to repeal Section 7 of the Clayton Act. As a matter of fact, I think that the consideration given to mergers and other agreements that take place in business by the Antitrust Division takes into account the global economy. I think there has been a major change in the Department during the course of this 4-year period, particularly in the last couple of years.

So I think the concerns Secretary Baldrige has are being properly addressed by the Department, and we are maintaining the competitive position to our industries in a global economy.

Senator RUDMAN. Is there a working group between Commerce and Justice to try to resolve these apparent differences within the Cabinet itself? Not that they are unhealthy, but just in terms of reaching some agreed solution?

Mr. MEESE. There has been a series of meetings between our people and the Commerce people. One of the things I hope to do when we get our new Assistant Attorney General for Antitrust is to perhaps formalize that a little bit so we have on a continuing basis these kinds of conferences which take into account a number of agencies of the government, not only the Department of Commerce but the U.S. Trade

Representative, who has a part in this, and the Treasury Department. As we now have a new Cabinet Council on Economic Policy, where we have centralized policymaking responsibilities, I think the views of this Council also will be taken into account by the Department.

But we are very cognizant of the need to be sure we are responsive to modern business problems, and particularly the global economy situation.

POOLED RESEARCH CONFLICT WITH ANTITRUST LAWS

Senator RUDMAN. I think that is one of the most important issues facing the Congress, facing your Department. I talk to many American businessmen who look at the Japanese model, what is going on in France and West Germany, and look at what is done there, with cartels and monopolies, that are encouraged to go after certain market sectors, and yet we have these laws which were designed at a different time.

I support them generally, always have, Clayton, Sherman, and the rest. But it seems to me we do have some looking to do in terms of our imbalance of payments and all of the other things, looking at the long term whether we are going to compete particularly in high tech areas where in some cases the cost of research is so enormous more pooling has to be done.

Mr. MEESE. I share your concern, Senator. We have to do it in two ways. One is to be sure our government is not providing unnecessary or counterproductive roadblocks to our own businesses and industries to be competitive.

Secondly, in the international field, we have to be even more aggressive in going out against the trade barriers that those nations are erecting and the practices you talk about, targeting the cartels and that sort of thing, which are being carried out by some of the other nations.

FORFEITURES AND ASSETS SEIZURES

Senator RUDMAN. My final question is on a totally unrelated issue. Senator Chiles and I both serve on the Senate Permanent Subcommittee on Investigations. We have had a number of interesting hearings over the last 4 years on organized crime and related matters.

One of the things I have always kind of wondered about is with that wonderful statute you have called the RICO statute why you don't do more forfeiture and seize assets in many cases, not just drug cases but other organized crime cases, where you have a golden opportunity not just to put them in jail but to destroy those assets and make it difficult for their successor to operate. Is that something you are going to kind of actively pursue?

Mr. MEESE. One of the reasons why it hasn't been done in the past, Senator, is because of the difficulties and the impediments to forfeiture of assets which were contained in the law.

Under the Comprehensive Crime Control Act of 1984, as you know, this has been changed materially. I think, as a result, not only will it be an objective of the Department, but it will now be legally possible to go after those assets in a variety of organized crime cases, not just the drug cases, although that will be significant, but many other cases as well.

Senator Rudman. I am delighted.

Mr. Meese. We think this is very important. We are now gearing up to do this and to have the technical resources within the Department to make those changes.

APPROPRIATIONS COMMITTEES ROLE IN CRIME BILL

Senator Rudman. That is very good. Of course, we are very aware of the contents, as I am sure you are aware. The crime bill did not come out of either of the judiciary committees. I am proud to say the crime bill came out of a last-minute conference with the House and this subcommittee. We were delighted to give you those new tools.

Mr. Meese. Needless to say, as I mentioned earlier in my prepared remarks, the activities of this subcommittee and its counterpart in the House in getting that accomplished in the closing days of the session——

Senator Rudman. At 3:00 a.m., as a matter of fact. [Laughter.]

Mr. Meese. — will probably live as one of the great monuments to effective law enforcement. We appreciate it.

Senator Rudman. Thank you very much, General.

Thank you very much, Mr. Chairman.

ASSETS FORFEITURE APPROPRIATION REQUIREMENT

Senator Laxalt. Senator Chiles.

Senator Chiles. General, just following up on that, the Assets Forfeiture law, I am delighted to hear you are getting ready to use that. The Department's budget offers a cap on the fund of $20 million. That was the total allowed for the Asset Forfeiture Fund in the Department to use the drug traffickers' illegal gains to put other traffickers out of business. Why did you put on a cap of $20 million?

Mr. Meese. It is now $10 million. We have worked that out with the Office of Management and Budget. This $10 million is really to cover unusual expenditures out of that fund. There is really no cap whatsoever on the activities to handle the forfeited assets. This is a net figure. After you deduct the amount shared with cities and States, after you deduct the cost of the management of the forfeited assets themselves, then there is an additional $10 million.

Senator Chiles. Additional. But there is no limit.

Mr. Meese. There is no limit to the amount.

Senator Chiles. In other words, if we seize $300 million, you are not saying we are only going to take $10 million of that or $20 million of that?

Mr. Meese. No. If we seize $300 million and it costs us $200 million to manage those assets—it won't, but assume it did—we would have a net of $100 million which goes into the Treasury. From that we can take $10 million for extraordinary expenses.

STATE AND LOCAL SHARING OF SEIZED CONVEYANCES

Senator CHILES. I hope you understand there is nothing that will make the sheriff more active in his area than the ability he has to share in that fund. I hear it every time, especially in the small counties and especially where they participate. They seize a plane and it is wrangled from them, when Customs or somebody would say we can't let you have that plane. So we go put it in a field and let it rot.

If you get something going where you can share some of those assets, where there is cooperation with local people, I think you will get even more cooperation out of them than you have ever seen.

Mr. MEESE. Senator, I agree with you a hundred percent. As a matter of fact, I think you will find that, thanks again to this legislation, we now have a summary process in which vehicles that are seized, including aircraft, up to a certain dollar amount, $100,000 I believe it is, and any vehicle, can be shared with a local government. That is by summary proceeding.

So we not only have that ability now, but we will be utilizing it.

Senator CHILES. Boy, I hope you use it. There is nothing a sheriff would rather have than an airplane. [Laughter.]

Mr. MEESE. Airplanes, any other type of vehicles, we will be doing that.

The other thing we will be doing, and we have already started, is we have made the first awards of money in the sharing of forfeited assets to local governments. That will enable them to pay the overtime to use it.

So I think you will see in the course of the next year literally a revolutionary change in the handling of forfeited assets.

IMMIGRATION AGREEMENT WITH CUBA

Senator CHILES. It will tremendously enhance the cooperation you get from those people.

Going to another subject, as you are aware, several recent developments have led to a semi-normalization of the immigration policies with the Cuban government, specifically the agreement with Cuba and the United States concerning repatriation of the Mariel criminals, reissuance of visas in Havana and the granting of permanent resident status to Cubans in the United States since the 1980 boatlift.

When the news hit Miami you had now granted permanent resident status under the 1966 Act to the Mariel refugees and it could mean another 250,000 Cubans would be eligible to come to Florida, I can tell you that news almost devastated South Florida and Miami.

By using "guesstimates", those of us familiar with large influxes of refugees and immigrants to our State, believe that there could be as many as 25-35,000 new Cubans arriving in Florida annually. This in itself would be a responsibility for any community but the impact on South Florida is intensified by the numbers of other nationalities who seek refuge in our State.

I repeat all of this to you because I want to stress the importance of developing an effective program to serve the needs of the entrants as well as the community. Floridians' concerns have been somewhat calmed by the reassurance that we have time to plan and prepare for the new residents, that they will be screened before entry and that they all will not be coming at once. But, this is where the reassurances end.

The people of Florida, including myself, are very frustrated that we cannot get information about the new entrants. As you can imagine, a profile of the new residents would be most helpful to the community to make ready for their presence in our communities. I have several questions that I will submit to you regarding these new entrants. I realize that some of the information is not available to you yet, but I would ask that it be provided to me as soon as possible.

But it has been difficult trying to find out something about these Cubans. A profile would be helpful. Are they pregnant women? Are they going to be job seekers? Will they be the aged? Any of that information would be tremendously helpful.

I just want to urge you to personally participate. You are going to be hearing from people from South Florida and the Committee they are putting together. They really need your cooperation in trying to get information as well as getting assistance in the future to deal with these 25,000 or 30,000 that are coming every year.

We know no matter where they enter into the United States, as fast as the airplane or bus travels, they end up in South Florida. That is where they are going to take residence.

Mr. MEESE. Senator, we will certainly cooperate with that task force and with you in providing this information. But I think as you mentioned already, the shock waves have subsided somewhat as they get more information.

Because the normal immigration processes will be applied to these people coming in, they will be care taken by the Immigration and Naturalization Service to make sure we are not bringing in people who are going to be a drain on our welfare resources or add to our economic problems. In fact, I think you would agree that in most cases, setting aside the Mariel boatlift in which you had a number of undesirable persons foisted on us by the Cuban government, the Cuban immigrants to this country have been very productive and have added a great deal to the economy of Florida.

Senator CHILES. Absolutely. And we are very proud of the progress that they have made and what they have meant for our country.

Mr. MEESE. It is our desire, Senator, to carry on that tradition rather than the unfortunate situation which is now being corrected and is corrected by this agreement with the Cuban government.

Senator CHILES. I would ask you if maybe you could submit for the record a profile of the Cubans who seek entry into the United States.

Mr. MEESE. I would be happy to do that.

[The information follows:]

PROFILE OF NEW CUBAN ENTRANTS

The Service will capture some basic biographic and demographic information on immigrants entering the United States from Cuba, as we do with all newly admitted permanent residents. Such data as age, sex, marital status, and state to which destined will be captured and available within sixty days after entry.

The Service is also planning to conduct a survey, using statistical sampling methods, of the Mariel Cubans who will be adjusting to permanent resident status over the next year. The analysis of this survey data will give us information on whether and when these individuals intend to naturalize; whether and when they intend to file visa petitions to benefit relatives outside the United States; as well as which relatives may come to the United States as a result of these petitions and where they may settle. It is anticipated that this type of survey will be of immense value to the Service in planning future workloads. We will, of course, share the results of this survey with other government agencies and with members of Congress.

To be eligible for issuance of an immigrant visa, an applicant must establish to the Department of State before entry that he or she is not likely to become a public charge after entry into the United States. Applicants who cannot document sufficient personal finances to guarantee this must provide documentary evidence of the agreement of some other individual to provide this support, or evidence of guaranteed employment in the United States, in accordance with Section 212(a)(15) of the Immigration and Nationality Act. This sponsorship arrangement includes expenses incurred in travel, food, housing, etc. It should be pointed out that these provisions are exactly the same for all immigrants to the United States from any country abroad. As lawfully admitted immigrants, these people do not generally qualify for resettlement programs. In addition, many Federal and state programs include the sponsor's financial assets when considering financial eligibility.

Ex-political prisoners and accompanying family members approved as refugees must be sponsored by a responsible individual or organization. Once a refugee is ready to be approved, the Refugee Data Center in New York is contacted to provide a sponsor. Refugees from Cuba will be assisted in a similar fashion to refugees from any other part of the world approved for the U.S. refugee program.

REPATRIATION PROGRAM

Senator CHILES. The committee, with the great assistance of this chairman, helped us last year, and Senator Rudman last year was of tremendous assistance, in getting an appropriation of $5 million to help those areas, Florida I guess being the principal one, that were impacted by having these Mariel prisoners in their prisons. Sixteen States have applied for funds under that. I notice even the State of Nevada had some prisoners and did make application for funds. Florida I think ended up getting up about $2 million of that $5 million that was put in there.

The repatriation is taking a lot longer than we hoped that it would. Thus far I guess we have had 23, 2 different months, or something, 46 or something, in total, out of the Federal prisons. But thus far I don't think we have had any out of our State system. But we do expect we will have some in the future.

I notice that of course there were no funds submitted in the budget this year for that division, but can you tell us whether you expect the Mariel returnees to step up in the next few months, and is the administration considering negotiating the return of more than the 2,746 Mariel Cubans you now have?

Mr. MEESE. Senator, we do anticipate picking up. We have had 23, as you point out, in one plane load. We have had 28 or 29 in another.

We hope 30 are going today. And we will continue this. We expect to step this up. We would would like to get at least 100 a month. If possible, perhaps even more than that, 150 a month, if it becomes necessary to make up for the lower numbers in these months due largely to some unfortunate judicial roadblocks.

But we do anticipate by the end of this fiscal year having all of the prisoners that are in this category out of the State facilities and either returned to Cuba or moved into Federal facilities which we are now vacating.

Senator Chiles. Over what period of time?

Mr. Meese. By the end of this fiscal year. That is the reason why no funds were put into the fiscal year 1986 budget. If we find that is not possible, then we will make a request for supplemental funds to reimburse the States.

Senator Chiles. $5 million approximately would be a third of the State's cost last year.

Mr. Meese. I understand. But it is our hope we will have this project completed by the end of the year.

[The information follows:]

CLARIFICATION OF MARIEL CUBAN PRISONER SITUATION

Following the hearing, the United States began its broadcasts to Cuba on Radio Marti. The government of Cuba then announced the abrogation of an earlier agreement to return Mariel-Cuban prisoners to Cuba and allow increased immigration from Cuba to the United States. If the United States is unable to resume the exchange of Mariel-Cubans, the Federal Prison System will be unable to absorb additional Cubans incarcerated by State and local governments.

FEDERAL PRISON IN THE SOUTHEAST

Senator Chiles. Last year we appropriated $3.5 million for the planning and site acquisition of a new Federal prison in the southeast. That would be a $32.5 million facility. As you know, we have 1,358 Federal prisons spaces in Florida and 3,112 Federal inmates from Florida spread across the country.

I notice in this year's budget the Department has tentatively located a site. Do you have plans where you plan to locate this facility?

Mr. Meese. We have looked at a number of sites. I would rather leave that to the Bureau of Prisons when the Director testifies.

Senator Bumpers. In my experience of being Governor, don't ever tell anybody where you are going to build a penitentiary. [Laughter.] Right, Paul?

Senator Laxalt. You are so right. [Laughter.]

DRUG ENFORCEMENT POLICY BOARD

Senator Chiles. General, under the crime bill last year, we made you the drug czar and Chairman of the new National Drug Enforcement Policy Board. I know that you all are getting ready to meet. What are your expectations for the Board to provide some real coordination of Federal activities?

Mr. MEESE. Senator, I expect that this Board will be able to carry out the mandate of the Congress. But more than that, I think it is important to point out there is a higher level of coordination of Federal resources directed toward drug trafficking than there ever has been in the history of the country right now.

The Cabinet Council on Legal Policy, under my predecessor, Bill Smith, was working with the Vice President to work on the interdiction system and the interaction with the South Florida task force, which was a pilot program. In fact, we do have these Organized Crime Drug Enforcement Task Forces which are multi-agency investigative forces which lead to prosecutions by U.S. attorneys.

We have achieved, as I say, the highest degree of coordination ever achieved in the history of the country. I think that the Drug Enforcement Policy Board will be able to build on this and perhaps to pull together some of the coordinating mechanisms and streamline the coordination process.

We will have our first meeting this month. I have gotten a commitment of my colleagues on the Cabinet for their personal involvement in this activity. So you will have at the highest level of the Executive branch, the intense personal interest of the Secretary of State, Secretary of Treasury, Secretary of Transportation, Secretary of Defense and myself particularly, as well as the other Cabinet members who are involved.

We will be looking at the coordinated effort to reduce the supply of narcotics coming into this country. We will also be working with the Director of the White House Office of Drug Abuse Policy to make sure that our activities are coordinated with the demand reduction activities, the prevention and education and health programs related to drugs. I look forward to what probably will be the most massive combined effort that we have been able to make on this problem.

We have a long way to go. I think we have a tremendous problem. But we have brought into this in the last 4 years something we have never had before: an international effort. This is largely due to the work my predecessor, Bill Smith, did in going around the world and dealing directly with the governments of these other countries. Now, virtually every drug producing country has its government working with ours in the eradication of the crops that are turned into narcotics, the destruction of illegal laboratories and other means of production, and better enforcement against the traffickers in those countries. We even have in Colombia, for example, the destruction by dynamite of illegal airstrips that are being used for the transportation of narcotics.

So I am very hopeful and certainly dedicated personally and as a Department head to providing the energy and effort to coordinate this as the Congress has envisioned in this legislation.

DESIGNER DRUGS ON BOARD'S AGENDA

Senator CHILES. That would be tremendously helpful.

Lastly, Mr. Chairman, the term, designer drugs, I referred to earlier refers to synthetic substances that are essentially chemical cousins of illegal narcotics. They can be produced by slightly altering the chemical formulation of an existing drug and thus creating a new narcotic analogue that will have similar effects to cocaine or heroin but may not be illegal since they are not on the schedule of controlled substances.

We know we have had 90 deaths. We know we have an increase in Parkinson's disease. The current enforcement structure of controlling these drugs is simply not equipped to deal with the situation in which new narcotic analogues can be created almost perpetually and evidently at very little cost. You are talking about one person with one small lab who can create tremendous amounts of these drugs.

Since this is still such a developing phenomenon, we have an opportunity, I think, to develop a strategy to get the necessary laws on the books before they get out of hand. With your National Enforcement Policy Board, it seems to me this is exactly the type of problem that the Board could address and should address.

I want to request of you that this matter be placed on the Board's agenda and that you report to the Congress some assessment of the designer drug problem in the United States and a strategy for enforcement to prevent the manufacturing and distribution of these drugs.

Mr. MEESE. We will be happy to do that, Senator, since we have already cited that as an item for attention by the Policy Board.

In addition, in advance of the meeting, the Drug Enforcement Administration has been working on this both in the legal and technical aspects.

Senator CHILES. Very good. Thank you, sir.

Thank you, Mr. Chairman.

JUDICIAL APPOINTMENTS

Senator LAXALT. Thank you, Senator Chiles.

Senator Lautenberg?

Senator LAUTENBERG. Thank, Mr. Chairman.

Mr. Meese, this is our first meeting. I congratulate you on taking this confirmation and I wish you all good success in this job.

My concerns today fall into two particular areas. One has to do with judicial appointment. The other has to do with the subject of Conrail, which your Department is going to have a great deal to say about. I would have some questions also on drug enforcement issues which I would like to submit in writing.

Mr. MEESE. Fine.

Senator LAUTENBERG. I don't want to overuse the good will of the chairman in taking too much time.

Starting off with Joe Rodriguez, is the name familiar to you, as an appointee to the bench?

Mr. MEESE. Yes.

Senator LAUTENBERG. We were very pleased in New Jersey that Joe Rodriguez was recommended for the bench of the Federal District

Court in New Jersey. He is a skilled and very experienced lawyer, respected public servant. The ABA unanimously rated him exceptionally qualified, an unusual expression of support. I am sure the President learned in considering Mr. Rodriguez that he enjoys the highest esteem of his colleagues, people from all walks of life in New Jersey. He has received awards from groups as diverse as the ACLU and the American Legion. He is a Democrat who is supportive of the Republican Governor, chairman of the State Commission on Investigation. He has been the public defender charged with providing legal defense to indigents accused of crime in whatever position. He has discharged his responsibility with a total sense of duty, a keen sense of fairness. I am sure he will do the same as a Federal District Court Judge.

Mr. Meese, as you know, confirmation of Mr. Rodriguez was blocked last year by a number of Senators on the Judiciary Committee. I joined in supporting him at that time and joined in a bipartisan effort in New Jersey to urge his renomination. The President responded.

Now three committee members have raised questions about Mr. Rodriguez's view on abortion, school prayer, gun control, school busing. He has been called back for a second day of hearings. It is going to start this week.

Mr. Meese, is it safe to assume that notwithstanding these questions, the President will support his nominee?

Mr. MEESE. Senator, I know of no reason why the President would not proceed with this nomination unless something unforeseen or unknown to us at the present time is brought up in the course of these hearings.

Senator LAUTENBERG. There is a fairly careful review, and of course mistakes are made in the appointment of judges. So you are saying barring anything that has not yet been understood or revealed in Mr. Rodriguez's background check, you don't see any reason.

Mr. MEESE. I don't see any at the present time. Now, if we get into an impasse with the Senate, then we would have to see what course of action. But I don't anticipate that occurring.

Senator LAUTENBERG. Well, as we have learned, particularly we in the minority party here, the President has a way with words and an ability to get things done even though he has some different views. He is going to support this appointment the way he supported Mr. Friday, or might he take a position more similar to that of Mr. Wilkenson?

Mr. MEESE. I think that he will support this appointment fully, Senator. I would rather not get into characterizing these other personnel matters.

JUDICIAL IDEOLOGICAL LITMUS TEST

Senator LAUTENBERG. Except I think they are kind of indications as to what can be done if the President lends his full support as opposed to kind of being talked out of it and persuaded or otherwise by other forces.

You have said on other occasions the administration does not apply an ideological litmus test. In reviewing candidates, of course judicial candidates, every President includes his views, the individual views, outlook, qualifications, in the appointment process.

The question I think where one draws the line between fair and unfair inquiry is one I think that was breached. In the Republican Platform they talked about how judges respect the sanctity of life. Everybody knows these are code words for particular positions.

Mr. MEESE. Senator, I have not accepted those as code words for a particular position. I take those words in their general meaning, and that is why I mean it when I say we have no litmus test on any particular subject.

Senator LAUTENBERG. I appreciate that. The line of propriety, therefore, in particular was breached in the questionnaire submitted to Mr. Rodriguez. The question is not whether he thinks—are you familiar with the questionnaire submitted by Senators Denton, East and Hatch?

Mr. MEESE. I have read it. I read newspaper accounts of it.

Senator BUMPERS. And Symms.

Senator LAUTENBERG. And Senator Symms.

The question is not whether, as indicated in the responses solicited by the questionnaire, Joe Rodriguez thinks life begins at conception or whether as a District Court Judge he will apply the precedents of the Supreme Court.

On the one hand I hear members of the Senate preach against judicial activism, yet in this process of questioning they seek the heighth of judicial activism. They ask the judges to pledge to overturn precedent in a host of areas.

Mr. Meese, you are familiar, I assume, with Article 6, Clause 3, of the Constitution which states, "No religious test shall ever be required as a qualification to any public office or public trust under the United States." Do you find any conflict between the constitutional mandate and an inquiry by Senators to call into question a nominee's view about a belief in the existence of a supreme being?

Mr. MEESE. Senator, I don't think it is appropriate for me as an executive official to comment on the conduct of Members of the Senate, nor do I have——

Senator LAUTENBERG. It wouldn't be the first time, Mr. Meese.

Mr. MEESE [continuing]. Nor do I think it is a very wise course of action. [Laughter.] But I think this is a question more properly addressed to your colleagues.

I will say this, however, as far as the Executive Branch is concerned, we do not have, contemplate, nor will ever utilize or employ such a test. As far as our activities are concerned, I don't think it is proper and it won't be done.

NEW JERSEY JUDICIAL VACANCIES

Senator LAUTENBERG. I really appreciate that unqualified support of openness in these appointments.

There are three vacancies in the Federal District Court in New Jersey and two in the Third Circuit. General Meese, the bar in New Jersey is concerned about the burdens on the Federal judiciary in the United

States which has the highest workload of any district in the circuit. The organized bar is seeking swift action to fill these vacancies. As you may know, Senator Bradley and I have written to the President urging he act promptly to fill the vacancies. We even offered to provide him with candidates if he was at a loss to come up with any. You know Senator Bradley is also a Democrat. [Laughter.]

Can you say when the bar in New Jersey can expect some reinforcements, when the President might be sending up nominees for the two other vacancies?

Mr. MEESE. We are working on those vacancies now both in the circuit and district courts. I can't give you the precise date, but they are in the process of being worked on now.

I will assure you, however, that we are using every possible resource of the Department to move as swiftly as possible in presenting the candidates to the President so that they can be submitted to the Senate for advice and consent. This is a high priority in the Department now to get all of the vacancies filled. We have a number of them, as you know, around the country, for two reasons.

One, because there was a judicial bill passed in the late portion of the last term which has to be worked on. We have some 115 or more vacancies we are working on, most of them coming out of that bill. So we are moving as quickly as possible to fill these vacancies as well as those created by the normal means of attrition.

PROPOSED SALE OF CONRAIL

Senator LAUTENBERG. We would appreciate that.

Your Department has been called on to determine if the proposed sale of Conrail to Norfolk Southern, which will result, by the way, in the Nation's largest railroad, is sound on competitive grounds. Your Antitrust Division has come up with a plan calling for the divestiture of certain lines by NS in their takeover by smaller competing carriers.

What is the status of those negotiations right now between the parties?

Mr. MEESE. I can't tell you the status of the negotiations except I believe they are coming to fruition. That is handled by the Department of Transportation. I can tell you the work of the Department of Justice has been completed. A full report on the competitive aspects of it, along with the recommendations for divestiture, as you know, was filed with the appropriate committee of Congress earlier this year. I believe the report was completed in January and it was filed and testimony on that subject has been completed as recently as 2 weeks ago.

Senator LAUTENBERG. Was there a question about a second review by the Justice Department raised?

Mr. MEESE. No. There was a question raised in the Senate Judiciary Committee. At the request of the chairman of the committee, I looked into the entire matter to be sure that there was no possibility of conflict of interest. I satisfied myself and subsequently submitted a report to the committee which satisfied the chairman and I believe most members of the committee that there was no conflict of interest or possibility of conflict of interest. There has been no changed circumstances or facts which would require any further reevaluation of the matter from the competitive aspects.

Senator LAUTENBERG. Is there still material under review by Justice in this sale?

Mr. MEESE. No. Our work has been completed.

Senator LAUTENBERG. What is the basis for judging the ability of or the basis of the Department's evaluating for the ability of regional carriers involved to provide competition? What is the criteria?

Mr. MEESE. It is really the other way around. Would this merger of Conrail into the Norfolk Southern system be in restraint of competition or would it in any way eliminate competition?

The criterion is, looking at the entire economic situation, whether this particular transaction would endanger competition in the field. I think that the Department, after reviewing all of the aspects, felt that with the divestiture of certain lines, it would not, given the total economic situation in the railroad industry.

CONSIDERATION OF COMPETITIVE SALE OF CONRAIL

Senator LAUTENBERG. There is a serious problem in my state because we are virtually a monopoly state in terms of our rail service availability. We were captive of Conrail when you began to study this sale and we will be captive when it is over.

Did your Department give any consideration to any recommendations such as public offering or sale to a nonrailroad party?

Mr. MEESE. I can't speak in detail for all the consideration that was done because this was a study that was completed before I entered the Department. However, I am very familiar with the Department of Justice's work, and basically our view was to take the proposal advanced by the Department of Transportation and examine it in terms of whether this would actively eliminate transportation competition in those particular areas of the country where Conrail operates. We did not feel it was our job to be a superjudge as to the relative merits of the transaction since that was something properly left to the Transportation Department and ultimately to the Congress.

Senator LAUTENBERG. I agree with that view. The question is in the interest, though, of creating a more competitive environment, so the shippers can get the best service available at the lowest rates, whether or not your Department was persuaded in any way to say look, as we review this, there are enough questions here, because there are those of us still not satisfied that the recommendations thus far of the Justice Department will provide the competitive environment we would like to see, that as a result perhaps there are these other things.

Now I recognize the sequence of events here, and maybe you will be called upon to evaluate other things, I hope so, as time goes by. But whether or not any of your people said, look, the easiest way to make sure this is not intracompetitive is to go this route or that route. You don't know of any initiatives there?

Mr. MEESE. We looked at the total situation. We looked at the competitive situation. We looked primarily at the proposal that was before us. But to the best of my knowledge, in the analysis by the Department, there were no such glaring threats to competition by the proposed solution or such obvious advantages to some other feasible solution that would mean that it would direct our ultimate conclusions in a particular direction different from what the Department came up with.

INTERSTATE COMMERCE COMMISSION COMPETITION STANDARDS

Senator LAUTENBERG. Are the standards applied to this sale and its competitive implications in your view equal to or more stringent than might be applied by the ICC?

Mr. MEESE. It is hard to say because the ICC would be able to devote more attention to some operating factors as well as competitive factors. However, I would say in terms of the competitive situation our standards are probably roughly equal to what the ICC would look at in terms of competition.

Senator LAUTENBERG. Will the public and the Congress have access to as much information about the nature of the transaction as they might in the case of an ICC hearing?

Mr. MEESE. I can't answer that because of the fact that the transaction itself is in the hands of the Transportation Department rather than in ours.

The report was made a matter of public record, I believe, when it was presented to the Congress. I think that in the long run, because of the steps that are involved here, the Transportation Department's activities, including their hearings and decisionmaking process, which then will be reviewed by Congress, probably will receive greater public scrutiny than they would ordinarily in the normal ICC process.

Senator LAUTENBERG. I am concerned about the public access because the interested public of course, whether it is shippers or the people in the Port of New York, Port of Philadelphia, and so forth, have a particular skill as they review the information than some of us in the Congress or a particular set of facts we might have.

CREDIT CARDS AND OTHER FINANCIAL CRIME

One other question, Mr. Chairman. Your indulgence for a moment more. I know I haven't taken my share of time, but I will leave that for others. [Laughter.]

In terms of the computer crime, I am interested in the subject of credit card fraud. Your fiscal year 1985 supplemental request for the FBI includes a $1.1 million, in rough terms, and 13 positions for the Financial Crimes Program, which includes computer, credit card fraud, trademark counterfeiting, bank-related robbery, et cetera. What is in short form the plan for the use of those additional resources in that area?

Mr. MEESE. The plan is basically to support the work of the Economic Crime Council, one of the initiatives we have taken recently.

Because of the increase in credit card fraud, because of the electronic transfer of funds and other technological advances in the financial industry, there are many more opportunities for computer crime and for crime on an interstate basis.

We have an Economic Crime Council composed of U.S. attorneys, investigators and others, who are working on a strategy to combat this type of criminal activity. The FBI has made this one of its priority attacks on crime, and these positions and these resources will be used to implement the recommendations of the Economic Crime Council.

They will be meeting I think within the next few weeks for one of their periodic meetings to carry out this strategy and also for increased investigative activity into these types of criminal enterprises.

Senator LAUTENBERG. I would be very interested if you could furnish me with the planning, if that is appropriate protocol here. I am newer around this place than you are in fact. I would appreciate that.

Mr. MEESE. Sure, I would be glad to provide information on the more detailed explanation of the specific things that the Bureau will be doing.

[The information follows:]

FBI STRATEGY IN FINANCIAL CRIMES PROGRAM

Prior to the enactment of the Comprehensive Crime Control Act of 1984 [CCCA] (Public Law 98-473), the FBI conducted computer crime investigations under its investigative jurisdiction in such matters as the Fraud and Wire Statute, Interstate Transportation of Stolen Property Statute and Copyright violations. Resources have been assigned to these matters as needed to address the existing case load in each field office.

With the enactment of the Comprehensive Crime Control Act of 1984, additional statutes concerning, among others, computer crime and credit card fraud were added to the FBI's investigative jurisdiction. In order to address the FBI's expanded jurisdiction under the CCCA in the general area of financial crimes, which includes computer and credit card crimes, a 1985 supplemental funding request was submitted for 28 workyears in 1985, and 113 workyears in 1986. As was the case prior to the enactment of the CCCA, the FBI will expend resources in the area of computer crime and credit card fraud based upon the quantity of quality cases received for investigation. The U.S. Secret Service also will have jurisdiction in computer related crime and credit card fraud, subject to an agreement between the Attorney General and the Secretary of the Treasury, which is presently in the process of being formulated.

FIVE-PERCENT SALARY CUT

Senator LAUTENBERG. The last thing, Mr. Meese. As the requirements for justice, surveillance, monitoring and so forth continue to expand, and some part of the sacrifice being made is asking those in the Federal Government, professionals, to take a salary cut in the year of 1986 of 5 percent, your Department is particularly filled with professionals, people educated, trained, who could easily find better pickens—I better be careful with that word. Pickings, right? Pickens suggests something else around here.

Senator BUMPERS. You can tell it is absolutely lost on everybody here. [Laughter.]

Senator LAUTENBERG. I can see it is not a boon to the discussion. [Laughter.]

Are you concerned about morale? Here your people are being asked to do more constantly. I have asked this question before and the chairman is perhaps getting bored with me asking it.

One thing I know is I come from a business background in which the motivation of people was often the difference between success and failure, not simply the motivation of fear of loss of job. I mean that doesn't work in this kind of society anymore. There is too much available choice. People are not willing to typically give their entire lives to their profession or business commitments.

But on the other hand, when someone is satisfied, feels good about themselves, feels they have the ability to provide their families with the things they consider essential, education, et cetera, I think it is awfully tough—and I know we are in a period of difficulty and austerity. And I am not recommending a blow to the budget, but I am asking as now a manager of an enormous Department, perhaps one of the largest collections of professional people in our country, is that a matter of concern for you or is everybody simply willing to put their shoulder to the grindstone and say what the hell, it is my turn. People have taken turns at getting their education, and so forth. What is your feeling?

Mr. MEESE. Senator, I have likewise had experience in private business management as well as government management in the past.

My feeling, and I have talked with a lot of our people about this, is that I don't think anybody likes a pay cut. I don't think any of us like to impose it unless it is absolutely necessary. The response I have had——

Senator LAUTENBERG. This was unanimous, right? You asked them to submit it in writing, no names. [Laughter.]

Mr. MEESE. Not even a handwriting analysis.

I have talked with a number of people and a number of our managers and they have talked with people within their organizations. I think the feeling is that nobody likes it, but I think on a one-time basis, if it is fairly and evenly applied throughout government, I think our people are willing to go along with it. I think that is their view.

At the same time, recognizing the absolute truth of what you say about morale being critically important to productivity and people's performance on the job, we have tried to increase morale through effective leadership, both on my own part and through our major managers, by appreciation for the work the employees are doing, by trying to make sure that the typical governmental roadblocks that impede good performance are taken away, by participation of our personnel in decision-making, by having more decentralization of authority and the other kinds of things through which, in an environment where it is necessary to ask for a pay cut in a given year, we make sure that the other aspects of morale and leadership are being attended to. We have a very vigorous campaign within the Department to handle that aspect of it.

Senator LAUTENBERG. Thank you, Mr. Meese, Mr. Chairman. I appreciate it.

LENGTH OF CASE INVESTIGATING TIME

Senator LAXALT. I thank the Senator.

Senator Bumpers?

Senator BUMPERS. General, I will try to be as brief as possible. As a trial lawyer before I became a politician, I was always concerned and I remain concerned about the time the Justice Department takes investigating cases. I know for a fact in my own experience that the Justice Department will be investigating a case, having some guy hanging by his thumbs, he knows he is under investigation, and the investigation just drags on eternally, with often little reports in the press from time to time.

But I also know on occasion, for example, the FBI will find something sexier and more exotic to do, and they will go out and do it and leave this guy's case pending. Sometimes in the scheme of things what is not all that important can drag on for 4 or 5 years.

Do you keep pretty good statistics in the Justice Department about the number of manhours and the continuity of those hours in your investigations?

Mr. MEESE. Senator, we do. Let me say at the outset I share your concerns both as a trial lawyer myself and also from the standpoint of the people that are affected by these investigations.

Senator BUMPERS. Incidentally, you have been sort of the recipient of what I am talking about to some extent.

Mr. MEESE. I have a deep understanding of the problem. [Laughter.] But I think that we do keep, and I think under Director Webster particularly, a great deal of attention has been devoted to case management so we don't have people either left hanging on the one hand or a lot of manpower being devoted to fruitless investigations.

One of the reasons why Federal investigations generally take longer is that the statutes the FBI and other governmental agencies rely on are really for the more complex types of criminal enterprises. So therefore, many times it does take a long time for these investigations.

The length of the investigation often is to be sure that there is a case before any prosecutorial activity or the presentation of a case to the grand jury takes place. I think for the most part this is a protection for the individual involved. Also, we have to remember that the FBI does not just go out and conjure up cases. Somebody made a complaint or something came to their attention which required them to get involved.

I am concerned about one thing you mentioned and that is the occasional leaks to the news media about an ongoing investigation. I can assure you there will be at least as much if not greater vigilance on my part as well as the other managers and command officers within the Department to prevent that from happening, out of fairness to the person who may be under investigation.

But Director Webster as well as our U.S. attorneys are constantly challenged to keep on top of these things, to make sure we don't have situations in which an investigation is just carried out for a long period of time simply because of inattention. There are certain types of things which, of course, require priority consideration.

The case that was broken yesterday, for example: a major criminal conspiracy such as that could, for a temporary period of time, literally occupy the attention of all the agents in a particular area, such as is taking place in Arkansas and some those places at the present time. But that is an atypical situation.

I can assure you that we will on a continuing basis maintain the supervision over our cases so the kind of thing you are suggesting will not happen.

Senator BUMPERS. I appreciate that response. Frankly, I think the IRS is more notorious in what I am talking about than the Justice Department has been. From time to time I have considered a legislative remedy. But simply, for example, you take the cases in New York dealing with the Mafia, those things take years. I understand that. Those are not the kinds of cases I am talking about. I have never sought a legislative remedy because there are so many exceptions. You just couldn't confine it. It would have to be dealt with on an administrative basis. That is the reason I address this to you.

Mr. MEESE. One of the things I will be talking with our U.S. attorneys about periodically is that when a lawyer, for example, representing a party under investigation comes in and says either, let's go forward, or let's have the investigation ended, we should be in a position to let the lawyer know, if we can, without compromising the investigation, the status of the investigation, or what a reasonable terminal point may be.

As we know, for the most part, I think, there has been a very careful selection of cases for detailed investigation. In fact, there is a preliminary investigation to see if there is really something here that merits a full investigation. A lot of investigations shouldn't go any further. We want to encourage that on the part of both the Bureau and our U.S. attorneys. But also I think being responsive to people against whom there should not be actual criminal prosecutions, and getting such investigations terminated at an early point, will be a matter for our attention.

1984 WIRETAPS

Senator BUMPERS. I appreciate that response, General.

Second, can you tell me how many legal wiretaps the Justice Department obtained in 1984?

Mr. MEESE. I don't have the exact statistics in mind. I will be glad to get that for you and submit it for the record, though. We have a report I believe that was sent to Congress. I just don't have the number in mind at the present time.

[The information follows:]

NUMBER OF 1984 WIRETAPS

Although no formal, annual report on wiretaps is made, the information is provided in other documents. In 1984, 462 wiretaps were obtained by the Department of Justice.

PRISON CONSTRUCTION

Senator BUMPERS. Third, you have mentioned something in your statement that is extremely important to me. I guess Senator Specter had to leave, but Senator Specter has sort of been on the cutting edge of this and I have been a staunch supporter and cosponsor of most of his bills. Incidentally, Senator Dole has also been involved in it. That is something for which there is absolutely no constituency in this country, and that is more prisons. The civil libertarians go up the wall when you talk about building more prisons.

But I just happen to believe that for the time being, people who have demonstrated time and time again their inability to function in a free society ought to be locked up. Yet in 1983, I think the States released over 20,000 inmates in this country prematurely that weren't even eligible for parole because of constitutional overcrowding. The polls show people's concerns about crime are going down, mine are going up.

I recognize that the proposition Senator Dole and I offered 2 or 3 years ago which would have cost a lot of money—it would have been a sharing program with the States—wasn't going anywhere. Now with the budget constraints like they are, I suspect that none of our bills this year are going anyplace.

I am glad to see that you are addressing the issue in your budget here. While the Federal inmate population is climbing on a steady basis, as you say at about 7 percent, the inmate population at the State level is climbing, in my opinion, much higher than that. When I left the Governor's office in my State, we had 1,900 inmates in all of our institutions. Today we have probably 3,700.

So despite our best efforts, and we have really stretched out to meet constitutional requirements, have improved our penal system, and I dare say more than any State in the Nation, we have beautiful facilities, they are good, we have expanded and yet we are almost right back where we started from because of the increased population. We have had to turn people loose prematurely.

So as I say, I know that it is expensive. I would much rather spend the money on education than trying to rehabilitate an inmate, which costs two or three times as much. But I still believe until you take these people off the streets after the second or third offense, we are not really going to make very much progress in this area. Dealing with the root cause of the problem is fine, and I am a strong advocate of all of those programs, but I still believe that one of the best remedies is to get these people out of society after they have demonstrated conclusively they simply can't hack it in a free society.

But as I say, I am just making a general statement there, and that is that there is no constituency for prisons. I get an unbelievable amount of mail every time I make a speech in my home State about what a crazy idea that is. Nobody wants to spend another dime on prisons. But those are the same people who deplore the crime rate. They are the same ones who raise all kinds of cane when some guy is turned loose and goes out and commits another crime. Of the 20,000 inmates released prematurely in 1983, admittedly most of those are white collar criminals and people not considered a threat to society, but some of them are.

Mr. MEESE. I wonder if I might respond briefly.

Senator BUMPERS. Certainly. I would be happy to hear your response.

PRISON REFORM AND IMPROVEMENT

Mr. MEESE. I share both your conclusion and concerns. I will make prison reform or prison improvement one of the primary objectives of my tenure in the Justice Department. I have announced that in my installation and in our management meetings.

I think there are a number of things we can do. I share your conclusion that some people, when they have demonstrated conclusively they cannot exist in a free society, have to be incarcerated. I also feel the decline in crime we have had for the past 3 years now is due to the fact that more people who require incarceration are being sent to prison by judges and that they are being held there for longer periods of time, the so-called career criminals.

By the way, I think your polls are accurate in terms of what you are hearing. We are having an actual decrease in crime, but the fear of crime is increasing. In other words, the public perceptions of crime are greater than the crime itself. As long as people are concerned, we have to continue our efforts both in real terms as well as improving their knowledge of what is now their perceptions.

ACTIONS BY FEDERAL GOVERNMENT

In terms of what we can do, I think there are some things the Federal Government can do. Director Carlson has been very vigorous in his activities in this regard. I think one of the things is we can be more cost-effective in the building of prisons. There is no reason why it costs $100,000 per prisoner to build a prison in some places and other places it costs somewhere in the neighborhood of $30,000 or $40,000.

I think we can have at the Federal Government level a clearing house for information on how we can be more cost-effective in both the building and operation of prisons. The National Institute of Corrections under the Bureau of Prisons has been working on that under the direction of Ray Brown, who handles that particular program. He has vast experience both as a police officer and as a correctional official in California. We are bringing that kind of expertise into it.

I think we need to provide off-the-shelf architectural plans that can be used by States—four, five or maybe more different varieties of plans to cover almost every situation. There is no need to start from scratch and try to make a prison an architectural wonder of the world. You can take off-the-shelf plans to do this.

AVAILABILITY OF FEDERAL LANDS

Another thing that we feel is very important and we are accelerating, again under the Comprehensive Crime Control Act, is making available Federal lands to State and local governments for the building of State prisons. As you pointed out very accurately earlier, everybody wants new prisons, but they don't want to have them in their back yard.

We feel there are a lot of Federal facilities, particularly unused military facilities, which by tradition have always been built in the boondocks, which will be away from population centers, which will be ideal locations for State and local correctional facilities. We are accelerating our efforts to make those lands available. We think when the Federal Government provides the land at no cost, there is an incentive then for the local jurisdiction or the State jurisdiction to do the actual building of the prison.

I am happy to report there is progress being made in that regard. States like California and Pennsylvania, among others, now have been willing to appropriate moneys and in some cases even successfully float bond issues, which have been approved by the voters in those States, for the building of prisons.

So I think we are again on the threshold of considerable development in that area. We intend in the Department of Justice to be on the front lines in making sure we have adequate prison facilities at the Federal level and in working with and encouraging people at the State level as well.

PRIVATE MANAGEMENT OF PRISONS

Senator BUMPERS. Let me make one comment, General. I will just say this: I am very pleased you are increasing the budget of the Marshals Service. I am sort of a protector of the Marshals Service. I think they do a splendid job. I am glad you are asking for an increase for them.

As an aside, before I get to the final question I was about to ask, do you have an opinion about this new concept of private management of prisons?

Mr. MEESE. I do. The National Institutes of Justice had a conference recently in Washington here in which a lot of ideas on this subject were produced and a lot of discussion went back and forth. The results of that I have not seen yet. I am looking forward to seeing that.

Yesterday I visited our Immigration and Naturalization Service detention center in El Paso where they have had very good results with contracting out a particular facility for a limited type of detainee, primarily women and young children.

My personal view, which I must say at this point is tentative, is that the contracting out of some services and perhaps in some situations the actual operation of special types of detention facilities deserves experimentation and examination. I think we want to be sure that it is done in a very deliberate and careful manner because there are some difficulties that could actually abort this type of thing.

But contracting out, for example, food service, medical service, laundry services, there are a lot of things like that that I think have been successfully used both at the local and at the Federal level. I think more things can be done in a careful way.

The one point that I would make, though, and I am very definite on this, it should not be used as an artificial means by which to cut budgets, and the same governmental lines of management authority ought to remain. In other words, I don't think county supervisors, a board of supervisors or commissioners in a county, should contract out directly with a private organization to handle correctional facilities for the county. It should be under the elected sheriff so you can have management control and so you have somebody to take care of the unusual situation of a prison riot or something like that.

So I think as long as accountability and management responsibility are maintained in the traditional pattern, experimentation in contracting out is a good thing.

Senator BUMPERS. I think your key word is accountability. That is the concern that has concerned me.

Mr. MEESE. Right.

AMOUNT OF DRUG SMUGGLING

Senator BUMPERS. Finally, we talk about DEA. I know Senator Chiles is from a State where that is such a big problem. We focus so much on DEA. But I wonder, how many drugs are coming in through airplanes and private methods of transportation like that as opposed to what is coming through Customs?

My son just came in from Germany the other day. He was over there on an internship with the German government. He came through and said, "You know, I could have been carrying a suitcase full of cocaine and I don't think anybody would have said anything," because apparently they use some kind of profile to determine whether or not somebody fits a profile of a guy bringing in drugs through Customs.

I am just wondering, how much is coming through Customs and how much is coming in over water and land, by airplane and other means of transportation?

Mr. MEESE. Well, obviously we don't have precise statistics because this is not something in which——

Senator BUMPERS. Of course, we don't.

Mr. MEESE [continuing]. Statistics gathering is easy, but I think if you look at the seizures—and that is why I say it is difficult because seizures are from one aspect a measure of what is coming in and at the same time it is also affected by law enforcement activity—I would say the bulk shipments are coming in primarily by aircraft, by boats, to some extent by land, through trucks and other things over the land borders. I think we also recognize that an appreciable amount is coming in by individuals, but the individual load is not as great as what can come in other ways. There also are attempts from time to time to ship it through commercial cargo means. Much of that has been detected.

I think Customs has done some very good work. The profile is one way of doing it. There are other things, dogs sniffing and other technological means. One of the things we are looking at now is to find out whether there are better technical means for dealing with the casual traveler, technological means of detecting narcotics. There have been some interesting developments that we hope might prove fruitful.

But I would say that Customs has done an excellent job in their inspection program. The Immigration and Naturalization Service and Customs working together have considerably beefed up their efforts at interdicting this form of drug smuggling. But we look for improvements particularly from a technical standpoint.

Senator **Bumpers**. Thank you very much, General.

Thank you, Paul.

CONCLUDING REMARKS

Senator **Laxalt**. I thank the Senator.

General, I had several questions for you, but I made the fatal mistake of yielding to my colleagues. Being the shy and reticent sorts they are——

Senator **Bumpers**. This is the last time I will be late; incidentally, I will say that. [Laughter.]

Senator **Laxalt**. First come, first served.

Senator **Bumpers**. I understand.

Senator **Laxalt**. I think the record should indicate in reference to the whole subject of prisons that Norm Carlson, who is here, has served for 15 years and has been on the line of fire and served with great distinction. We commend you for your work, Norm.

Mr. **Carlson**. Thank you, Senator, I appreciate it.

Senator **Laxalt**. I want to commend the new General, too. Those of us who know him well know he is a competent professional. He certainly showed it here today, covering a broad range of issues, some highly technical in nature. And, like most of us in this business, I didn't see any indications you were going to buck them elsewhere.

So it is a real pleasure having you here in every sense of the word. This subcommittee, as I indicated in the beginning, feels very strongly that Justice and the work that you are doing is very high on our list of priorities, no question about it. We talk about defense, we are pouring $300 billion-plus in there. Sometimes I think in the process that we subordinate another real line of defense, and that is the internal defense.

Senator **Bumpers**. We need a new definition of national security.

Senator **Laxalt**. I think you are probably right. You are absolutely right.

But in any event, it is obvious from your testimony of what your Department has done that you are very cognizant of the high priority you must attach to the line of work you are doing. We commend all of you for that.

Senator **Bumpers**. Mr. Chairman, why do we keep meeting in this room? Isn't there a better place to meet?

Senator **Laxalt**. It is the finest room known to man. You can't get too many people in here. [Laughter.]

Senator **Bumpers**. I hadn't thought about that.

Senator **Laxalt**. Are you missing the cameras?

Senator **Bumpers**. Yes. [Laughter.] I am up next year. I need more exposure. [Laughter.]

Senator **Laxalt**. All right, we will hold the next one over in the Dirksen Building.

We thank you again, Mr. Attorney General, for being with us.

SUBMITTED QUESTIONS

If there is no objection, we will reopen the record for a brief minute.

Senator Specter, the record should indicate, spent most of his time here at this particular hearing, and before he had an opportunity to address questions to the Attorney General, he had to leave for another hearing.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

ATTORNEY GENERAL

Drug Enforcement Efforts

QUESTION:

In your statement, you say that the leaders of international drug smuggling organizations have declared war on the Drug Enforcement Administration (DEA) and other law enforcement agencies due to your successes at breaking up their operations. You go on to state, "pressure must continue to be applied." Yet, you have not asked for any program enhancements for DEA. Don't you need more resources to follow up on your previous efforts?

ANSWER:

Since 1982, when the FBI was given concurrent jurisdiction in drug cases, the resource levels provided to fight the drug war have increased dramatically (The major new infusion being for OCDE task forces). It is only recently that we have been staffed fully in the organizations which received increases. These staffing levels, along with coordination and cooperation with other law enforcement agencies and the Defense Department, will enable us to "keep the pressure applied."

State and Local Drug Task Forces

QUESTION:

Several cities have approached the committee to indicate their desire to establish joint Federal/local drug task forces. They are willing to put up their own people and resources to participate in those task forces. Unfortunately, DEA does not have the resources to expand that program. Does this indicate that you believe that program is of limited utility? How do you recommend getting more Federal/local cooperation in this area?

ANSWER:

This program has clearly established its utility in a coordinated Federal/state/local effort to combat drug abuse. But, there is a clearly understood and separate focus of this program, i.e., these task forces concentrate on the mid-level criminal element, while Federal resources are targetted on high-level traffickers. DEA resources are being applied as nationally as possible. There are 22 currently funded task forces, and another 24 informal ones. In addition, DEA participates with state and local in special cases, or where short-term cooperative efforts are needed urgently.

INS Inspections Enhancement

QUESTION:

Last year, Congress substantially enhanced the Border Patrol in the INS. Don't we need an equivalent enhancement in inspections this year?

ANSWER:

We do not believe that we need an equivalent enhancement in INS inspections this year. Last year the Congress provided an additional 80 positions for the inspections program for 1985; all of these positions have been filled and there should be sufficient resources to accomplish the inspections requirements.

Federal Prison Population

QUESTION:

According to your statement, the Federal prison population has grown 7.2 percent or by 2,255 over the last year. Again, using your figures, the average daily population for next year is only expected to increase by 363 over the number of inmates you had in your system on March 3, 1985.

Is that figure realistic?

ANSWER:

That figure may prove to be unrealistic. We have generally taken a very conservative approach when projecting prison population in order to avoid any possible costly prison construction that would prove to be in excess of need. This estimate was developed some time back and there has been a dramatic increase in the population since that time. In fact, an increase of 1,500 has occurred in the past three months.

QUESTION:

Why will there be such drop in the growth of the prison population?

ANSWER:

As indicated, there may not be a drop in the population growth.

QUESTION:

Given the fact that we are already experiencing a 34% rate of overcrowding in the system, what would be the result if prison population growth rates continued at the levels of the last four years, rather than followed your new projections?

ANSWER:

If the past growth rate continues and we are unable to find surplus facilities that could quickly be converted to prison use, the Federal Prison System would be overcrowded to the point where it might prove to be an unmanageable situation. We hope that this type of a situation can be avoided.

Assets Forfeiture Fund

QUESTION:

Both the Justice Department and the Customs Service are requesting funds to establish asset forfeiture funds. Wouldn't it be more efficient to consolidate all forfeiture functions in one place that would service every law enforcement agency?

ANSWER:

The Department is moving aggressively towards full implementation of the provisions of the Comprehensive Crime Control Act of 1984--including the Act's forfeiture provisions to which your question is directed.

As a result of a major policy review in 1983, the Department of Justice acted to begin resolving a number of problems which threatened the success of our forfeiture program--problems which soon became more acute with the expanded enforcement responsibilities under the 1984 forfeiture legislation. To reduce organizational deficiencies caused by overlapping property management operations within the Department, we assigned responsibility for the management of seized and forfeited property to a single entity within the Department, the U.S. Marshals Service. In addition, we created a centralized legal support unit in the Criminal Division to assist investigators and U.S. Attorneys in their handling of civil and criminal forfeiture caseload. Finally, with OMB's support, we proposed the establishment of a single appropriation account into which forfeiture proceeds would flow and out of which we would pay all of the principal costs of our Department-wide forfeiture program.

These decisions and initiatives were taken, in large part, to ensure sound accounting and management practices within the Department, and I believe we are making progress toward that objective. They were also taken in recognition of long-standing Government-wide policy which encourages a clear delineation between the agency responsible for interdiction (Customs) and the agencies within the Department of Justice responsible for domestic enforcement. Delineations of responsibility are clearly evident in Reorganization Plan No. 2 of 1973 and in a December 1975 agreement between Customs and the Drug Enforcement Administration, both of which distinguished roles and responsibilities for the affected agencies.

Over the years, Congress has also signaled its intent for the executive branch to assign clearly separated functions and responsibilities to the Customs Service in its enforcement of customs and tariff statutes under Title 19, and to the Department of Justice in its enforcement of the Controlled Substances Act and other drug and criminal statutes contained in Title 18 and Title 21. To commingle these responsibilities under a single Government-wide funding mechanism would contradict efforts by the Congress and by past and current Administrations to create a bifurcated system for carrying out criminal enforcement activities within the Federal Government.

In my judgment, the establishment of a single funding mechanism for the entire Government--to include Justice, Treasury, and Transportation (U.S. Coast Guard also has authority in this area)--would create significant inter-Departmental management problems of coordination, span of control, accounting, and reporting. Moreover, it would blur the important policy and procedural distinctions which are currently operational, and which, I believe, are important to retain.

FBI/DEA Merger

QUESTION:

Do you intend to merge the Drug Enforcement Administration into the Federal Bureau of Investigation?

ANSWER:

This is largely a question of semantics. The FBI is now working closely with DEA in the investigation of drug cases. In addition, organizational changes made in 1982 have closely coordinated the operations of the FBI and DEA. To this extent, therefore, the FBI and DEA can be said to have "merged." At the same time, these are two independent components of the Department with differing missions, separate budgets and many other distinguishing characteristics. We are satisfied with the current operational arrangement and contemplate no substantial changes in the immediate future.

Bankruptcy Administration

QUESTION:

According to your justification, you are currently considering a number of options for bankruptcy administration.

What are they?

When do you intend to make a final decision?

Do you have any rough figures of what the new bankruptcy administration system will cost?

ANSWER:

There are several options involving the administration of bankruptcy cases. One is to expand the U.S. Trustee pilot program which is in the Department of Justice to a nationwide basis. The second is to place in the judiciary, an administrative office for bankruptcy matters. As these offices would be in separate branches, their duties would, by necessity, have to vary.

The Department is presently reviewing all possible options. This is a substantial question and one which deserves careful review and analysis. The performance of the pilot program, examining what the necessary responsibilities of an administrative office should be, and determining where this administrative entity is best placed, is being reviewed. Moreover, in this era of fiscal austerity, funding alternatives should be carefully examined. As our review is not complete, any overall cost figures of a particular program have not been developed. However, the report issued by the Department last year concerning the U.S. Trustee system, does provide some rough estimates.

Five Percent Pay Cut

QUESTION:

What would happen to your Department if Congress enacted the budget you have presented today, but did not approve the 5% pay cut?

ANSWER:

If the Congress allows for the President's full request for the Department of Justice but make no additional allowance for the decision to maintain Federal employee pay in 1986 as the 1985 level then several options are available. These include:

- Curtailing potential discretionary funding areas in the Department such as equipment purchases, contracts and travel--to the extent that such curtailment would not affect vital mission accomplishment. These funds could then be reprogrammed to cover salary costs.
- Curtailing employment in programs of lower priority in the Department. There are over 150 programs Department-wide. Such selective curtailment in employment should allow hiring to continue as planned or allow reassignment of current personnel into those programs of Presidential priority such as the FBI's Foreign Counterintelligence program.
- If all the curtailment took place in the personnel area, the Department would realize about 2,000 fewer workyears in 1986 than the 63,650 proposed in the President's 1986 request. We would in effect be kept at our planned 1985 workyear ceiling of 61,688.
- Depending on final Congressional action on the President's 1986 request and assuming that that final action includes no funds to maintain Federal employee pay in 1986 at the 1985 level, we would need to closely examine each Department appropriation to see if and where funds could be transferred in 1986 through a supplemental transfer proposal. This is one other available alternative to ensure that priority initiatives will move forward, as planned, in 1986.

None of these alternatives is attractive, but there would be few other available alternatives.

QUESTION:

The U.S. Attorneys account has received significant enhancements over the last few years as part of your efforts to prosecute organized crime figures and illegal drug traffickers. Given the new emphasis on organized crime prosecutions in every U.S. Attorney Office, do you still perceive the need for strike forces? If so, what is it?

ANSWER:

We have made dramatic strides in attacking organized crime throughtout the United States, particularly in the past few years. It would be a serious mistake, however, to reduce our efforts at this time. The Strike Forces continue to be our front line in the attack on organized crime in America including traditional organized crime groups and emerging groups such as outlaw motorcycle gangs, prison gangs and ethnic crime organizations. Strike Forces also have the lead in the high priority area of labor racketeering. The Strike Forces have more than proven their worth in providing a coordinated, highly expert law enforcement effort against organized crime. They provide a continuity of effort against organized crime that dates back almost two decades.

It should be borne in mind that the Organized Crime Drug Enforcement Task Forces were intended to complement and not supplant our Strike Forces. To fold the Strike Forces in with U.S. Attorneys' Offices would have the effect of diluting our effort against organized crime, an effort which has been one of the most successful of all Federal law enforcement initiatives.

INTERPOL

QUESTION:

Every year over the past few years, the Justice Department has requested increased resources for participation in INTERPOL. What are the benefits of American participation in that organization?

ANSWER:

Benefits of American participation in INTERPOL include:

- The INTERPOL-United States National Central Bureau (USNCB) provides the only communication network through which state and local law enforcement agencies can contact foreign law enforcement authorities in 135 countries abroad.

- The INTERPOL-USNCB provides a vehicle for Federal agencies to contact law enforcement authorities in 135 member countries, whereas most U.S. Federal law enforcement agencies are represented in a more limited number of foreign countries.

- The INTERPOL-USNCB provides a direct contact to law enforcement authorities in countries where the United States does not have diplomatic relations and where there is no U.S. presence able to obtain law enforcement information.

- With United States urging, the INTERPOL Constitution now categorizes terrorist acts as criminal acts rather than political acts. Thus the 136-member countries (including the United States) are better able to pool and exchange information on suspected terrorists and terrorist organizations.

OCDE Task Forces

QUESTION:

We have heard that the Organized Crime Drug Enforcement Task Forces are working very well in the core cities. Do you believe it might be more effective to have more task forces, each with a more limited area scope? Or, do you believe the present system is working well?

ANSWER:

We believe the present system is working well. The current size of the regions permits a high degree of cooperation not only among Federal agents and prosecutors but also among state and local officials. This has allowed many cases to be pursued which may have otherwise been dropped.

Accomplishments have been substantial since the program's inception. By the end of 1984, the 13 Task Forces had initiated 804 investigations and almost 3,500 defendants had been indicted. Fines, seizures and forfeitures totalled over $291 million.

QUESTIONS SUBMITTED BY SENATOR WEICKER

ATTORNEY GENERAL

Civil Rights of Institutionalized Persons

QUESTION:

Mr. Meese, what proportion of the resources appropriated for the Civil Rights Division of the Department of Justice are devoted to investigating issues relating to institutions for the mentally disabled as authorized by the Civil Rights of Institutionalized Persons Act?

ANSWER:

$2,160,000 or 9.6% of the Division's budget is allocated for the operation of the Special Litigation Section which has responsibility, *inter alia*, for investigating alleged egregious and flagrant conditions of confinement in institutions for the mentally disabled pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). This Section is doing an extraordinarily fine job with the resources Congress has appropriated for our efforts.

QUESTION:

Mr. Meese, I have been told it can be difficult, in some cases impossible, to get the Department of Justice to investigate allegations of abuse in institutions for the mentally disabled. In fact, during a recent series of hearings I chaired concerning the institutionalized mentally disabled, witnesses testified that they had submitted numerous documents and photographs alleging violent, sometimes brutal, institutional conditions. Yet, these witnesses reported that the Department of Justice repeatedly requested additional information and would not conduct an investigation.

What is the threshold of information required by the Department of Justice to investigate allegations of abuse in state institutions for the mentally disabled?

ANSWER:

Complaints are reviewed promptly. Our review procedures have been submitted to Congress as required by Section 8 of the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997f. These procedures, in effect since 1981, are followed faithfully. In fact, we investigate complaints readily.

The testimony alluded to in this question came from individuals who did not cooperate with our preliminary efforts to verify their complaints or otherwise provided unreliable information. Notwithstanding these facts, the Department acted appropriately in each case. In one, we investigated based on information obtained independently by the Department. In the second case, we made a judgment that private counsel was adequately representing private litigants in court and our resources ought to be directed to other situations not yet receiving attention.

QUESTION:

I understand that recent Department of Justice investigations of institutions for the mentally disabled have taken as long as 27 months before any investigation findings were reported.

What can be done to improve the Department's ability and willingness to conduct an investigation and report investigation findings in a more timely fashion?

ANSWER:

Investigations proceed promptly. As you are aware, our commitment to faithful implementation of the statutory requirements of CRIPA imposes on us the need to conduct activities pursuant to the statute in the spirit of cooperation and in as amicable a manner as possible. Several investigations were delayed due to some resistance to our investigatory efforts by state officials. Once this hurdle is cleared, we conduct investigations as quickly as possible. While strict adherence to statutory requirements and Congressional intent with respect to implementation of CRIPA may take some time, it remains our view that cooperative efforts and mutually agreed upon remedies are more effective in curing constitutional deficiencies than protracted adversarial litigation.

QUESTION:

Mr. Meese, I have been told that the investigators in the Civil Rights Division of the Department of Justice do not have the necessary expertise to effectively investigate institutions for the mentally disabled. What qualifications do Department of Justice investigators possess in the area of the mentally disabled?

ANSWER:

We submit that the expertise the Department has developed with respect to institutional matters is second to none. However, in most cases we retain private consultants who have outstanding reputations, including many nationally renowned leaders in their respective fields of endeavor.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

ATTORNEY GENERAL

Justice Program Increases

QUESTION:

The Department is requesting a net increase of $33,992,000 and 955 positions over the anticipated appropriations for FY 1985. However, this net change includes an offset of $68,957,000 for the 5 percent pay cut. The budget agreement between the Senate Republican leadership and the White House does not include the 5 percent pay reductions. In light of that decision, how does the Department plan to absorb the increases which include 371 positions and $25,276,000 for the FBI?

ANSWER:

If the Congress allows for the President's full request for the Department of Justice plus an allowance to maintain pay at the 1985 level, then there would be no adverse effect on the Department in 1986.

If on the other hand, the Congress allows for the President's full request for the Department of Justice but make no additional allowance for the decision to maintain federal employee pay in 1986 as the 1985 level then several options are available. These include:

- Curtailing potential discretionary funding areas in the Department such as equipment purchases, contracts and travel--to the extent that such curtailment would not affect vital mission accomplishment. These funds could then be reprogrammed to cover salary costs.
- Curtailing planned or current employment in programs of lower priority in the Department. There are over 150 programs Department-wide. Such selective curtailment in employment should allow hiring to continue as planned or allow reassignment of current personnel into those programs of high priority such as the FBI's Foreign Counterintelligence program.
- If all the curtailment took place in the personnel area, the Department would realize about 2,000 fewer workyears in 1986 than the 63,650 proposed in the President's 1986 request. The Department would in effect be kept at the planned 1985 workyear ceiling of 61,688.
- Depending on final Congressional action on the President's 1986 request and assuming that that final action includes no funds to maintain federal employee pay in 1986 at the 1985 level, each Department appropriation would be examined to see if and where funds could be transferred in 1986 through a supplemental transfer proposal. This is one other available alternative to ensure that priority initiatives will move forward, as planned, in 1986.

None of these alternatives is attractive, but each represents a prudent response to the situation presented in your question.

Regional Information Sharing Systems

QUESTION:

Mr. Meese, I hope that your background as a prosecutor bodes better for the regional information sharing systems programs. For some reason, your predecessors in the Justice Department have sought to terminate this vital assistance to our state and local law enforcement agencies.

What is your general comment about this program; are you for it or against it?

ANSWER:

The Administration's position, as well as my own, is that we have no objection to the notion of state and local law enforcement agencies exchanging information; however, the cost of such efforts should be borne by the participating agencies.

Considering the fact that we have invested over $50 million in this program over the years; I believe it is now appropriate that state and local funds be used for those projects which have proven to be beneficial to them.

QUESTION:

As you know, Congress provided $9,900,000 for this program in FY 1985. The Department is proposing to only spend $5,400,000 for the RISS projects and to transfer $3,890,000 to the U.S. Attorneys and Marshals, and use $610,000 to set up the accounting for the Assets Forfeiture Fund.

I have a letter signed by Chief J. P. Strom, of the South Carolina law enforcement division, and others, protesting this proposal. I will make that part of the record. Let me indicate that I completely agree with Chief Strom and I do not think this Subcommittee will agree to that proposal.

How valid are your supplemental requirements, as I don't believe we have confirmed many of the 85 new judgeships?

ANSWER:

The supplemental requirements reflect the real needs of the Department of Justice.

The work of the U.S. Attorneys and their staff is influenced significantly by the number of judges and the number of locations where court is held. Because more judges can hear more cases, an active court system increases the workload in the U.S. Attorneys' offices. The judges increase the capacity of the judicial system. This is particularly true in the criminal area. Over the last few years, the shortage of judges has led to delays in bringing complex white collar crime and major narcotics cases to trial. Speedy Trial Act deadlines were being extended because of the court calendar problems. With more judges presiding over more cases, the U.S. Attorneys' workload will require increased court time. At any one time, the U.S. Attorneys will have to be able to respond to more judges. The logistics of putting more personnel into more courts at any one time creates a need for a strong attorney staff. In the area of civil litigation, more judges yield more civil trials where the U.S. Government is the defendant. Increased judgeships will bring more cases to trial more rapidly. Without additional attorneys to defend the government, substantial financial losses may be incurred as the result of adverse judgements and forced settlements.

With respect to the U.S. Marshals Service (USMS), the 1985 supplemental request of 59 positions and $1,516,000 for the 85 new judgeships continues to be valid because the increased workload has already begun to be realized by the Service. As soon as a judge is confirmed and begins to sit on the bench, the Marshals Service's support requirements for that judge commence as well. These immediate support requirements include the service of process, provision of court security for criminal proceedings and the holding of prisoners in custody. Over the next several months, as the remainder of the judgeships are filled, the workload requirements of the USMS to support these additional judges will expand as well. Because basic training for deputy U.S. marshals requires twelve weeks, it is necessary to hire these personnel well in advance of the expected confirmation dates of these judges.

QUESTION:

Will the Administration send up a supplemental request for these requirements?

ANSWER:

The Administration is unlikely to submit any further supplemental requests for the U.S. Attorneys and Marshals in 1985. If Congress denies the proposed transfer of RISS funds from General Administration, "Salaries and expenses," alternative financing arrangements for the U.S. Attorneys and Marshals supplemental will be necessary.

Legal Services

QUESTION:

Mr. Attorney General, in an article in the April 6th New York Times, W. Clark Durant, the new Chairman of the Legal Services Corporation, praises President Reagan's proposal to abolish Federal funds for legal services as "a courageous act." We will have the opportunity to hear Mr. Durant on April 24, but do you think it takes courage to cut off basic legal services to America's poor, who have no way to defend themselves?

ANSWER:

Although the Administration consistently has proposed eliminating separate Federal funding for the Legal Services Corporation, we do not agree that America's poor have no means for obtaining legal assistance.

The Administration agrees with the American Bar Association's Code of Professional Responsibility which states "the basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer . . . . Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged." Much more can and should be done by the private bar and through the expanded use of law students and new law school graduates. To supplement or coordinate private bar efforts, states can use social services block grant funds which are at the $2.7 billion level in 1985. There are no restrictions against using these funds for legal services.

QUESTION:

The material that we have seen on the budget agreement between the Republican leadership and White House seems to indicate that the legal services program is to be maintained.

A. Is that correct and does that mean that the President and Attorney General will now be actively pushing for reauthorization and an appropriation for legal services?

B. The President did not initially recommend any amount for legal services. What level does the Administration now support?

ANSWER:

The Administration has reached an agreement with the Senate leadership on a plan to reduce the budget deficit without increasing taxes. This plan includes funds to continue legal services activities. Assumptions about program levels for the Legal Services Corporation and other programs need to be viewed in the broader context of the deficit reduction plan. The President's budget repeatedly has sought no separate funding for the Legal Services Corporation and the Administration still believes that continued funding for it to be undesirable for reasons I have outlined earlier. I would not expect the Administration to play an active role in seeking either a reauthorization or an appropriation for the Legal Services Corporation.

Personnel Losses

QUESTION:

When Secretary Shultz testified, he noted that the Department of State had lost 21 Americans in the last two years to hostile action overseas. Last month, the DEA lost agent Enrique Camarena-Salazar in Mexico.

How many employees has the Department of Justice lost in the line of duty during the last 2 years?

ANSWER:

The Department has lost five employees in the line of duty during the last two years. The Drug Enforcement Administration has lost eleven since 1973, but only two in last two years (one helicopter pilot in early 1984 and Special Agent Camarena in 1985). No Federal Bureau of Investigation or Immigration and Naturalization Service agents have been lost. The Federal Prison System had two staff members murdered in 1983 and three in 1984. The U.S. Marshals Service had 2 marshals killed in February 1983, but none in the last 2 years.

QUESTION:

Agents operating under cover, by definition, expose themselves to hostile situations, but are we taking all possible precautions to protect the Department's personnel?

ANSWER:

Yes, all possible precautions are taken including security guard service, building access alterations, closed circuit TV systems, vehicle armoring, etc.

QUESTION:

The Mexican authorities are now holding two major drug traffickers, Rafael Caro Quintero and Ernesto Fonseca as a result of the murder of Mr. Camarena. I recall the initial delays in the investigation of this tragedy that prompted the slowdowns at the border.

Have we been assured by the Mexican authorities that this case will be prosecuted?

ANSWER:

There is every reason to believe that firm and expedited action will be taken in this tragic case and the Department intends to do everything necessary to encourage such action.

High Level Vacancies

QUESTION:

Do you have a list of the positions at the GS-18 level or higher which are vacant and the names of the persons expected to fill each position, or at least the plans for each vacancy?

ANSWER:

The following high level vacancies currently exist in the Department of Justice.

Organization	Position Title
Office of the Deputy Attorney General	Deputy Attorney General, EL-II
Office of Legal Counsel	Assistant Attorney General, EL-IV
Office of Legal Counsel	Deputy Assistant Attorney General, (SES)
Office of Legislative and Intergovernmental Affairs	Assistant Attorney General, EL-IV
Justice Management Division	Assistant Attorney General for Administration, (SES)
Office of Legal Policy	Assistant Attorney General, EL-IV
Antitrust Division	Assistant Attorney General, EL-IV
Antitrust Division	Deputy Assistant Attorney General, (SES)
Civil Division	Assistant Attorney General, EL-IV
Civil Division	Deputy Assistant Attorney General, (SES)
Land and Natural Resources Division	Deputy Assistant Attorney General, (SES)
Drug Enforcement Administration	Administrator, EL-III

Department officials have a number of candidates under consideration for these positions, but no definitive selections have been indicated. For positions requiring formal nomination by the President, the Attorney General has not submitted any requests yet, except for the nominations of Messrs. Lowell Jensen and William Bradford Reynolds for the positions of Deputy Attorney General and Associate Attorney General respectively. Several positions not requiring Presidential nomination will be held open until the Presidential nomination process is complete.

QUESTION:

Mr. Reynolds, the Assistant Attorney General for Civil Rights, is being moved up to be Associate Attorney General. Who will replace Mr. Reynolds in the Civil Rights slot?

ANSWER:

The nomination of Assistant Attorney General Wm. Bradford Reynolds to be Associate Attorney General is currently pending before the Senate Committee on the Judiciary. The position of Assistant Attorney General for the Civil Rights Division has not yet been filled. In selecting a nominee for the position as head of the Civil Rights Division we will be looking for an attorney with talent, integrity, and a sense of responsibility; and above all one who is opposed to all forms of racial discrimination.

Judgeship Vacancies

QUESTION:

According to the Administrative Office of the U.S. Courts, only 18 of the 61 new district judges have been nominated, of whom six have been confirmed. Similarly, 10 of the 24 new circuit judges have been nominated, of whom nine have been confirmed.

In view of the Department's supplemental requests to provide increased U.S. Attorneys and Marshals to staff the additional judgeships, when can we expect the Administation to forward the remaining nominations?

ANSWER:

As of May 2, 1985, President Reagan had nominated 20 of the 61 new district judges, and the Senate had confirmed 17. The President had nominated 10 of the 24 new circuit judges as of May 2, and the Senate had confirmed nine.

The Department of Justice and the President's Judicial Selection Committee have been processing nominations of the new judges expeditiously. However, several factors have slowed the process down. First, the Senate's inexpliciable failure to act on nine district and two circuit nominations before the end of the last session of Congress slowed the process of filling the new judicial vacancies. Second, because of the large number of new district vacancies, a number of Senators have delayed forwarding recommendations to the Administration. Several recommendations are still outstanding, and we hope to receive them in the next few weeks. Third, FBI and ABA investigations, which must be completed before a candidate is nominated, also prolong the process for a period of eight to 10 weeks for each nominee. Thus, the three nominations for new positions now pending in the Senate reflect candidates who were in process as long as ago as February.

A substantial number of candidates for new district and circuit judgeships are currently in process, and we expect that they will be nominated at the earliest possible time. The Administration's objective is to have all the new district and circuit judges nominated and confirmed by the end of this session of Congress. Barring major unforeseen delays, this objective certainly is achievable.

Reception and Representation

QUESTION:

Last year the Congress approved a $45,000 allowance for the FBI reception and representation expenses, as well as an allowance of $75,000 for the balance of the Department. This was a significant increase over the previous allowance of $75,000 for the Department as a whole, as the Committee was concerned about unreimbursed valid expenditures.

As of March 31, 1985, how much has been obligated against the FBI and Departmental allowance?

Last year there was concern that INS officials overseas were personally bearing representation expenses. How has the Departmental $75,000 been allocated among the offices and agencies; and is INS assured of an adequate amount for their people overseas?

ANSWER:

The following provides the FY 1985 allocations and obligations by organization through March 31, 1985.

Organization	Allocation	Obligations Through 3/31/85
Attorney General	$27,400	$13,447.10
FBI	45,000	16,933.05
INS	3,000	378.20
DEA	24,000	16,000.00
BOP	1,500	422.00
*Reserve	19,100	...
Total	120,000	47,180.35

*Former Attorney General Smith established a significant reserve account so that Mr. Meese would have the opportunity to consider further allocations. Of highest priority for distribution of the remaining reserve allocation will be to reimburse overseas agents expenses for both INS and DEA.

QUESTION:

For FY 1986 the Department proposed a total of $120,000, the same total as FY 1985 for reception and representation expenses under Section 201. The proposed language indicates that this allowance is to encompass such similar limitations included for other justice appropriations. The only other such allowance we know of is the $45,000 that is being maintained for the FBI.

Is there any good reason for the new lanaguage proposed for Section 201?

ANSWER:

The additional language included for 1986 was to clarify that the FBI's $45,000 allocation was in addition to the $75,000 provided in the General Provisions for the other Department organizations.

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QUESTION:

If you are able to convince us that the overall limitation of $120,000 is appropriate, what assurances do we have that the FBI will get $45,000? I recall that Attorney General Smith spent $4,463 on gifts to dignitaries on his trip to six countries in October and November 1982.

ANSWER:

The proposed appropriation language establishes the intent that the FBI should have up to $45,000 in representation authority and the FBI, in fact, has been allocated this amount in FY 1985.

Coleman Case

QUESTION:

We have been made aware of the Coleman Case in North Dakota. Apparently 9 North Dakota farmers successfully sued the Farmers Home Administration in February 1984. In March 1984, the lawyers filed for fees and on June 15, 1984, Judge Van Sickle awarded attorneys' fees and costs, a total of $179,000 for six attorneys.

As I understand it, the United States has appealed both the basic case and the fees awarded, and the Eighth Circuit has denied both appeals. However, the Department is still holding out for further appeals.

This appears to be a good possibility for misallocation of resources. I am told that Farmers Home had as many as 7 lawyers on this case at one time, without counting the Agriculture Department lawyers, whose names did not appear on the court papers.

1. The private lawyers submitted their fees and costs; please submit an estimate of the government's legal costs in this case.
2. Undoubtedly the Department must defend the Constitution and protect against precedents that may have far-reaching consequences. However, in this matter, there is a feeling by the winning attorneys that they are being harassed by some sore losers in the government. In a case like this, when is the decision made that the costs out-weight the benefits to the government?

ANSWER:

The case of Coleman v. Block, (8th Cir., No. 84-2487) involves a petition for attorneys' fees by counsel for plaintiffs in a nationwide class action in which the district court held that the Secretary must implement a loan deferral program under 7 U.S.C. 1981a, but, following the Eighth Circuit's decision in Allison v. Block, 723 F.2d 831 (8th Cir. 1983), held that the Secretary was not required to issue regulations. The Solicitor General decided not to pursue an appeal on the merits of the decision in Coleman on the recommendation of the Department of Agriculture and its protective notice of appeal was dismissed voluntarily. However, plaintiffs cross-appealed, claiming that regulations were required to implement 7 U.S.C. 1981a, despite the fact that the Eighth Circuit had already ruled in Allison that regulations were not required. The Eighth Circuit dismissed plaintiffs' appeal in Coleman after the Secretary voluntarily issued proposed regulations for public comment. 49 Fed. Reg. 47007 (1984).

On June 15, 1984, the district court in Coleman awarded plaintiffs' attorneys $179,382.00 under the Equal Access to Justice Act, 28 U.S.C. 2412(b). The court's award was premised on the theory that plaintiffs' suit to require implementation of a loan deferral program was anologous to a civil rights suit under the Civil Rights Act, 42 U.S.C. 1983, for which fees are authorized in the Civil Rights Attorneys Fees Awards Act, 42 U.S.C. 1988. This was the only legal basis for the fee award made by the district court in this case, although plaintiffs had also sought fees under another section of the Equal Access to Justice Act, 28 U.S.C. 2412(d), which only authorizes fees if the position of the government was not "substantially justified" and plaintiffs meet other eligibility requirements. The government had urged the district court to defer ruling on the fee application because the very issue of whether fees could be awarded on the §1983 analogy was then pending before the entire Eighth Circuit Court of Appeals in Premachandra v. Mitts, No. 82-2441.

Subsequently, on January 14, 1985, the entire Eighth Circuit in Premachandra rejected the proposition that attorneys fees can be awarded against the government by analogy to 42 U.S.C. 1983. Thus, the sole basis for the district court's award of attorneys fees in this case (Coleman) has been found by the Eighth Circuit to be invalid.

The petition for rehearing filed by the government in this case was to persuade the court to give the Secretary of Agriculture an opportunity to demonstrate that attorneys fees in Coleman are totally barred under its decision in Premachandra. The present petition for rehearing was necessary because the government inadvertently filed its notice of appeal from the fee award in Coleman one day late, on August 15, 1984. The court of appeals subsequently denied the government's appeal from denial of the motion for extension of time to file the notice of appeal. The government petitioned for rehearing from that decision, arguing that the one-day lapse of time in filing the notice of appeal should not preclude the government from challenging a fee award manifestly improper under the prior rulings of the court. Plaintiffs naturally resisted vigorously the government's efforts in this regard.

We estimate that we have expended less than $10,000 in litigating this issue, which we believe to be a reasonable expenditure of resources in view of the substantial sum of taxpayer's money involved, i.e., $179,000 in attorneys fees. The petition for rehearing, and appellees' response thereto, is currently pending before the Eighth Circuit, and a ruling by the court is expected imminently.

The petition for rehearing was denied by the Eighth Circuit on May 8, 1985. On May 29, 1985. The Solicitor General decided against seeking further review in the case. Thus, the fees awarded plaintiffs will be paid as soon as possible.

Organized Crime Drug Enforcement

QUESTION:

The Administration first proposed the Organized Crime Drug enhancement in December 1982 as a single appropriation under the Attorney General's control. Then Deputy Attorney General Schmults testified to the Subcommittee that the unified appropriation would "provide the necessary flexibility in allocating funds both to regions and organizations and assign unquestioned responsibility for the success of this effort." He also stated that "failure to provide a single source of funding could weaken the effort to coordinate the work of the many organizations from three cabinet agencies comprising the effort."

Ed Schmults made believers out of us and we provided a unified OCDE appropriation for FY 1983 and 1984. Last year the Administration distributed OCDE among the various accounts, but the Senate approved Senator Biden's amendment restoring $95,846,000 for OCDE in a single appropriation. In conference, the House prevailed on not having a unified appropriation.

Mr. Attorney General, do you believe that you still retain the flexibility necessary to allocate OCDE since the funds are now entrenched in the budgets of the FBI, DEA and the other Departments?

ANSWER:

Yes. This is primarily because of the strong cooperative posture among the participating agencies. The various agency officials responsible for managing this program recognize that changes in drug trafficking patterns do occur and that these changes may require a reallocation of available resources.

QUESTION:

Does a system exist that reports on the OCDE work of the FBI, DEA, other Justice activities, as well as the OCDE work of Treasury and the Coast Guard? Is the effort being maintained?

ANSWER:

A Case Monitoring System exists to meet the reporting and managment requirements of Department officials and U.S. Attorney personnel. Through this system, essential investigative and prosecutorial information is compiled and recorded. This data is distributed to all appropriate OCDE personnel and serves as the basis for the development of quarterly reports.

This system performs on a continuous basis with each Task Force reporting to Washington on developments in case motions, indictments, dispositions and sentencing. In addition, a fairly recent requirement is the reporting of assets forfeited to the government in Task Force cases.

QUESTION:

Please provide a summary by each organization, of the workyears and funds for OCDE of the Justice Agencies, as well as the OCDE activities of the Departments of Treasury and Transportation for both FY 1985 and 1986.

ANSWER:

(Dollars in thousands)

	FY 1985		FY 1986	
	WY	Amt	WY	Amt
FBI........	443	$34,664	446	$34,428
DEA........	355	37,806	358	37,565
USA........	350	20,394	350	20,595
USM........	13	689	13	686
Criminal...	6	595	6	595
Tax........	7	598	9	689
IRS........	262	12,200	262	12,700
BATF.......	101	7,100	101	7,200
Customs....	226	15,200	226	14,800
Total....	1,763	129,246	1,771	129,258

Organization of Drug Enforcement

QUESTION:

In lieu of a drug czar, the National Narcotics Act of 1984 established a National Drug Enforcement Policy Board, chaired by the Attorney General.

Has the Board been established and what have been its activities to date?

ANSWER:

The first meeting of the National Drug Enforcement Policy Board was held on Wednesday, April 24, 1985. The organizational structure of this function has been determined and consists of three tiers--the Cabinet Level Policy Board chaired by the Attorney General, a Working Group consisting of agency heads and chaired by the Deputy Attorney General, and a staff to support the Working Group.

QUESTION:

How does the Board fit in with the Vice President's National Narcotics Border Interdiction System (NNBIS), for example, will the Board be assuming the operation of NNBIS?

ANSWER:

The Policy Board will be analyzing Federal interdiction efforts, including the National Narcotics Border Interdiction System, and will advise Congress on its findings when the study is complete.

QUESTION:

During President Reagan's first term, the FBI was brought into drug investigations. Are there plans to merge fully the DEA into the FBI?

ANSWER:

There are no plans for the immediate consolidation of DEA and FBI. Obviously, both organizations are working within the current framework to make adjustments which will result in more efficient joint operations. Example of these adjustments are agent cross training, vehicle maintenance and laboratory services.

Clearly, the Administration will continue to consider any plans for more effective drug investigations. Should this result in a plan to merge DEA and FBI, the Congress would have to approve that reorganization.

OCDE Effectiveness

QUESTION:

Mr. Meese, on March 19, 1985, you transmitted to the President the annual report of the Organized Crime Drug Enforcement Task Force programs. With you we rejoice in the news that the 13 Task Forces have initiated 804 cases resulting in 953 indictments, initiating criminal charges against 3,468 individuals, of whom 1,408 have been convicted.

However, on p. 98 of the report, we find that 948 (67%) of the 1,408 convicted defendants received sentences of five years or less. I thought the OCDE effort was focused on the king-pins. But five years is hardly the kind of term expected for major traffickers. Does this indicate that OCDE has not been effective at reaching the king-pins?

ANSWER:

While the OCDE effort is aimed at the "king-pins" of drug trafficking organizations many other "players" are targetted in the process of developing OCDE cases who receive lighter sentences.

However, those offenders sentenced under the Continuing Criminal Enterprise, the major king-pins, have received substantial sentences - 52 percent of those defendants sentenced received prison terms of 10 to 20 years, 10 percent received terms of 20 to 25 years and 38 percent were given terms of 30 years or greater.

President's Commission on Organized Crime

QUESTION:

There is a supplemental of $635,000 requested for the President's Commission on Organized Crime. You indicate in your statement that the President has extended the Commission until April 1, 1986.

You also indicate that the $635,000 will enable the Commission to sustain its work through the end of 1985. Is that fiscal or calendar year 1985 as there is no request for the Commission's activities in the 1986 budget?

ANSWER:

The supplemental request of $635,000 for the President's Commission on Organized Crime will enable the Commission to sustain its work through the end of FY 1985. Now that the President has extended the

Commission's existence until April 1, 1986 the Department will be submitting a 1986 budget amendment which will provide resources for the Commission to complete its mandate.

QUESTION:

Early on the Commission was experiencing internal difficulties between the Chairman and Executive Director. We understand that things are working better, but what have been the Commission's major findings thus far?

ANSWER:

The Chairman and Executive Director enjoy an excellent working relationship. Notable achievements of the Commission thus far include:

- a thorough analysis on the problems of money laundering in the form of an interim report, The Cash Connection, which includes administrative and legislative recommendations aimed at controlling the flow of illegal money in the U.S.

- the most current, comprehensive exposure of the principal groups engaged in heroin trafficking at the Commission's most recent hearing. Additional hearings have been held on the subjects of organized crime of Asian origin, cocaine trafficking and money laundering.

- considerable staff work has been performed for future hearings on gambling, labor racketeering and La Cosa Nostra Today.

- The Commission is involved in a unique compilation of nationwide statistics from state, local and Federal law enforcement agencies and prosecutors. Research projects are under way in the areas of electronic surveillance, military assistance to law enforcement and legal ethics. Resource permitting, these findings will be published in future reports.

Immigration Reform

QUESTION:

Last year we came close to enacting the Simpson-Mazzoli Immigration Reform Bill. What are the Administration's plans for immigration legislation in this Congress?

ANSWER:

The Administration remains committed to the need for immigration reform. As you know the Simpson-Mazzoli bill contained the three basic elements that were the foundation of the Administration's 1981 immigration reform bill: controlling illegal immigration, improving the system for legal immigration, and providing a controlled legalization of status program for certain undocumented aliens who have entered this country.

The Administration is expecting the introduction of an Immigration Reform bill by the Senate in the near future. Currently, there are two bills introduced on the House side. The Administration continues its strong support for immigration reform legislation and commits its full efforts to work with Congress in a bipartisan effort to achieve enactment of such needed legislation.

Because the exact provisions of final legislation are not yet known, the 1986 budget request for INS contains no funding for an Immigration Reform Bill.

Border Management

QUESTION:

I have served on this Subcommittee for 14 years and and I have lost count of the reorganization plans that have been proposed for managing the border. The Ford, Carter, and Reagan Administrations have all made proposals to consolidate the forces into one agency.

Our clerk has just returned from the border and I'm sure can attest that at any given time, the crossings may be manned by either a Customs or INS inspector or both. Quite frankly, with all the cross-designations that has occurred between Customs and INS, I don't think the rank and file would notice the difference if they were consolidated into one agency. The main opponents seem to be the chiefs who realize that there will be some thinning at their level; and, of course, the congressional turf-fighters. Sometimes I think Customs and INS spend more time watching each other than they do on illegal aliens and goods.

Mr. Attorney General, I assume that in the White House, you were deeply involved in President Reagan's proposal for INS to assume responsibility for land border points, and Customs to assume such responsibility at air and seaports. Does the Administration plan to resubmit that proposal?

ANSWER:

To the best of my knowledge, the Administration does not plan to resubmit the proposal for INS to assume responsibility at land border ports and the U.S. Customs Service to assume responsibility at air and sea ports at this time.

QUESTION:

What is your overall view of the personnel situation on the border? I ask that because the last proposal provided for an overall reduction in the staff on the border and at the ports. While there may be some economies possible in the overhead, I have never had had the feeling that we were overstaffed on the border.

ANSWER:

I do not believe that the Justice Department is presently overstaffed at the border. While I am unable to comment on Customs staffing it is probably likely that consolidation of the border enforcement function could lead to some economies which might lead to a reduction is the staffing level required at the border. This matter, however, would require significantly more study before an assessment of the staffing levels options at the border can be made.

QUESTION:

Does the Administration plan to submit a reorganization of the border activities; and if so, what can you tell us about it?

ANSWER:

To my knowledge, the Administration does not plan to submit a reorganization of the border activities at this time.

QUESTION:

In 1980 we placed a limit of $20,000 on overtime paid INS employees. Has it been necessary to grant any exceptions to the present $20,000 limitation?

ANSWER:

In a few rare instances, the Commissioner has granted exemptions to the $20,000 overtime cap.

QUESTION:

When we established the overtime cap, it was identical to the limit on Customs employees. We now find that the Customs limit has been raised to $25,000. Should we, to be fair, increase the INS limit to $25,000.

ANSWER:

To be fair and consistent with our attempts to achieve parity between INS and Customs, we should raise INS' overtime limit to the same amount as Customs.

Inspection of Train in Maine

QUESTION:

Mr. Chairman, I received a letter from Senator Mitchell with regard to the inspection of a Canadian VIA rail train that travels thru northern Maine.

Senator Mitchell writes that the Canadians want to resume this service on June 1. There was a meeting in February where it was decided that at least two, and possibly three, immigration inspectors are required to process the train. Apparently INS has indicated that it cannot make these positions available, and so the train cannot operate without the immigration inspections.

The restoration of the Atlantic Rail Run was a campaign promise of Prime Minister Mulroney. Just last month President Reagan and the Prime Minister met in Ottawa to improve relations between the U.S. and Canada. Shouldn't we be helping the Canadians get this service underway as part of the President's efforts to improve relations?

ANSWER:

The Department has looked into this matter. The Commissioner of INS has directed that adequate resources to meet the needs of the Altanta Rail Run be assigned from Jackson and Vanceboro, Maine for the remainder of FY 1985 and FY 1986.

QUESTION:

Last year we increased the Inspections Program by 80 positions to the current total of 1,531 positions. How many of those positions are now filled?

ANSWER:

All of those positions have been filled.

Inspection of Adirondack

QUESTION:

Last year in our report we "strongly urged" the INS to provide on-board or pre-boarding inspection of the Adirondack. This was a result of the concerns of the New York Department of Transportation and AMTRAK that the train was being unnecessarily delayed by inspections which hurt the train's marketability.

What has been done to improve the inspection of Adirondack and has the train's on-time performance been improved?

While performance may have improved lately, are you confident that the addition of the inspector will be sufficient to maintain your performance during the train's peak ridership periods; i.e., the summer months, Thanksgiving, and Christmas?

There still is interest in having this train preinspected before it leaves Montreal. Last year INS was concerned that the train slowed down for some grade crossings in Canada. Just how slow does the train get down to, as there is some skepticism that the train actually slows down enough for someone to board?

ANSWER:

INS and Customs were strongly urged to provide enroute inspection of AMTRAK's Adirondack passenger train. Although the Service is not opposed to enroute inspection, resources at Rouses Point and Champlain, New York are such that we would be forced to take an inspector or inspectors from the vehicular inspection lines for an inordinate amount of time in order to provide this service.

AMTRAK officials have proposed that an inspector board the train at Delson, Quebec, allowing approximately twenty minutes in addition to the scheduled twenty-five minute stop in Rouses Point in which to complete the inspection. However, considering the time lost in transporting the inspectors to Delson, and allowing for the occasional late operation of Train #68, the Service is not in a position to fill these inspectors' positions during their absence from the port of entry.

Our records, although in conflict with those furnished by AMTRAK, indicate considerable improvement in delays at Rouses Point. The average delays during the following three months of 1984 were as follows:

September	4.8 minutes
October	3.4 minutes
November	1.4 minutes under schedule

AMTRAK officials were advised on December 14, 1984, that INS would continue to monitor the situation carefully and provide improvements when and where possible.

Prisons

QUESTION:

As of March 26, 1985, there were some 34,099 persons incarcerated in Federal Correctional Institutions. That is almost 3,000 more than we had a year ago, and is 37 percent more than the current rated capacity.

If we had no growth in the population, do we have enough facilities on-line to house the current population pursuant to standards? If yes, when will that capacity be reached?

ANSWER:

If there was no growth in the prisoner population there still would not be enough facilities to house the existing population. As you are aware, our facilities request for the last several years seek to address existing problems of overcrowding.

QUESTION:

Starting with the most recent 24,922 rated capacity figure, please provide an exhibit showing the chronological order of each new authorized additions and new facilities, including the spaces to be provided by each one, building to an eventual total.

ANSWER:

The attached chart provides the requested information based on a rated capacity of 24,922. The Federal Prison System changes the rated capacity throughout the year based on such things as completed renovations and modernizations.

Item	1985	1986	1987	1988	1989	1990
Average daily population..	32,930	33,790	34,616	35,241	35,771	36,320
Rated capacity............	24,922	27,246	28,524	28,549	28,549	29,549
Previously approved chngs. to rated capacity:						
Surplus facilities:						
FPC Duluth, MN........		49				
Loretto, PA [4].......	500					
Rochester, MN [4].....	500					
Adding capacity at existing institutions:						
Boron.................	98					
Leavenworth Control/ Seg. Unit [1].......		81				
Memphis [1]...........	100					
Petersburg Camp [1]...	113					
Ashland [1]...........	100					
Butner [1]............	100					
Tallahassee [1].......	100					
Oxford Camp [1].......	104					
La Tuna [2]...........		200				
Butner Seg. Unit [2]..		30				
Montgomery............		160				
Milan.................		100				
Allenwood.............		150				
Otisville Sate. Camp..		150				
Seagoville Addition...		96				
Tucson................		94				
Texarkana.............		100				
Lexington Rehab Bldg..		68				
New construction:						
FCI Phoenix...........	500					
MDC Los Angeles [2]...			500			
NE Level 2/3 FCI [3]..					500	
SE Level 2/3 FCI [5]..					500	
NE Level 3/4 FCI [6]..						500
Renov. & lost capacity:						
USP Atlanta...........			-475			
FCI Lexington.........	109					
Rated capacity adjusted for approved changes.....	27,246	28,524	28,549	28,549	29,549	30,049
Percent overcrowded......	21%	18%	21%	23%	21%	21%

[1] Funded by the 1983 Organized Crime Drug Enforcement Appropriation.
[2] Funded in 1983 by P.L. 98-8, Jobs Bill.
[3] The 1984 appropriation provided the Planning and Site Acquisition funds. New construction funds were provided in the 1985 appropriation.
[4] FPS reprogrammed funds from the NE L4 FCI provided in the 1984 appropriation for these projects.
[5] The 1985 appropriation provided Planning and Site Acquisition funds.
[6] Planning and Site Acquisition only.

QUESTION:

With the new crime control measures enacted last year, what is your best projection of the average population for each of the next five years? How much additional capacity will we have to add above that already funded?

ANSWER:

The recently enacted Comprehensive Crime Control Act of 1984 will in all likelihood further increase the inmate population. Two factors exist which make it impossible to estimate the long term impact at this time. First, for the several new Federal offenses created by the Act, we must wait for the full implementation of investigative and prosecutorial guidelines and identification of resources directed at these crimes. Secondly, the sentencing reform provisions of the Act will probably have the most significant long-term impact on the inmate population level. Since the new Sentencing Guidelines Commission does not submit its recommended guidelines to the Congress until April 1986, it would be premature for the Bureau of Prisons to make predictions at this time. We will continue to collect and analyze data in order to provide predictions of the Act's impact on the Federal Prison System.

Although we have not yet considered the impact of the enactment of CCCA on the prisoner population, below is our projection of the Federal inmate population from 1984-1989 based on current investigative and prosecutorial priorities:

1984	1985	1986	1987	1988	1989
31,394	32,930	33,790	34,616	35,241	35,771

QUESTION:

South Carolina has no Federal prison. What is the current number of Federal prisoners with South Carolina addresses, and how do they distribute by Security level?

ANSWER:

Currently there are 338 Federal prisoners with South Carolina addresses. The distribution by security level is as follows:

Security Level		Number of Inmates from South Carolina
1		116
2		51
3		68
4		80
5		20
6		3
	TOTAL	338

QUESTION:

In FY 1985, we appropriated $3,500,000 for a new Federal Correctional Institution in the Southeast. The justifications indicate that a possible site has been located. Can you tell us where you plan to locate this facility?

ANSWER:

The Federal Prison System is currently considering two sites for this facility. One site is adjacent to the Federal Law Enforcement Training Center in Glynn County, Georgia. The other is located in Jackson County, Florida. Based on inmate legal residences, we believe the Southern Georgia/Northern Florida area is an ideal location for a correctional facility.

QUESTION:

Similarly, we provided construction funding for a new Northeast Federal Correctional Institution, as well as for site acquisition of another facility in the Northeast. Of the total of $39,950,000 that has been provided, only $303,000 was obligated at the time the justifications were submitted.

What progress can you report with regard to these facilites?

ANSWER:

The Federal Prison System is looking at a number of sites in the Northeast region. Primarily these sites are located in the States of New Jersey, e.g., Fort Dix and Fairfield Township; New York State, e.g., Malone, N.Y. and former Stewart Air Force Base near Newburg, N.Y.; and there are also possibilities in the State of Pennsylvania. Due to the population density in the region and political opposition, it has been difficult to finalize the site selection process.

QUESTION:

Many believe that one of these facilities should be for prisoners from the Washington-Baltimore area. What are the possibilities of finding a site in this area?

ANSWER:

The Federal Prison System has considered two sites in the State of Maryland (Bainbridge and Fort Meade), however in both instances the Congressmen representing these districts were adamantly opposed to the location of a prison facility at these locations.

Office of Justice Programs

QUESTION:

On February 28, the Chairman and I approved of the reorganization of the Office of Justice Programs. We asked that a second look be given the plans to transfer OJP's Congressional and Public Affairs Office into their corresponding departmental offices.

Have those plans now been shelved as we think this is a classic example of "if it ain't broke, don't fix it"?

ANSWER:

The reorganization referred to was sought to obtain the efficiencies which result from consolidation and the enhanced coordination. It was contemplated that individuals with expertise in OJP issues would be retained in both main Justice offices as is the general practice of those offices.

Final decision on this issue is pending appointment of the Director of Public Affairs and the Assistant Attorney General of the Office of Legislative and Intergovernmental Affairs.

QUESTION:

We are informed that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) did not obligate $13,000,000 of the amount available for discretionary grants in FY 1984.

What caused this shortfall, as I recall something similar in the early days of the Carter Administration where the Director of OJJDP blamed the staff for delays?

ANSWER:

These funds were not spent in 1984 for a variety of reasons which include the receipt of grant applications too late in the fiscal year for processing, the receipt of poor grant applications that did not meet program specifications, formula grant money from non-participating states which were available should a state decide to participate, reverted funds from expired formula and discretionary grants, programs which were planned but did not work out, and a lengthy process for competitive projects.

QUESTION:

Is the above amount the source of the $12,226,000 that is proposed for transfer to the U.S. Attorneys and Marshals?

ANSWER:

Yes. The remaining $800,000 is a reprogramming request to provide funds for the Emergency Assistance provision of the Justice Assistance Act.

QUESTION:

Why wasn't the $12,226,000 retained in OJJPD for FY 1985 projects; isn't there sufficient application for these funds?

ANSWER:

The $12,226,000 are funds from various Juvenile Justice programs which were not spent in 1984. The Department urgently needs funds to hire Assistant U.S. Attorneys and Deputy Marshals to support the 85 new judgeships. In order to reduce the impact of a supplemental appropriation request on the deficit, the Department reviewed all its accounts to see if there were funds which could be made available from present or previous appropriations. After the review, the

Department concluded that since the $12,226,000 were carryover funds and since there was $67,600,000 of new Juvenile Justice money available in 1985, the $12,226,000 of carryover funds were most urgently needed to support the 85 new judgeships.

Commission on the Bicentennial of the Constitution

QUESTION:

The bicentennial of the constitutional convention's adoption of the Constitution occurs on September 17, 1987.

Public Law 98-101, approved September 29, 1983, provides for the establishment of a Commission on the Bicentennial of the Constitution.

More than 18 months have passed since P.L. 98-101 was approved, and the Commission has yet been established. Does the Administration plan to establish the Commission?

ANSWER:

Yes, the President supports the establishment of the Commission on the Bicentennial of the Constitution.

On April 15, 1985 the President transmitted the necessary supplemental and budget amendment to support its activities.

QUESTION:

Sec. 6(c) requires the Commission to submit a report within two years of the enactment of P.L. 98-101. That would be September 29, 1985, or less than six months from now. How is that reporting requirement to be fulfilled?

ANSWER:

The Department is not sure of the status of this report.

QUESTION:

On January 16, 1985, the Washington Post reported that the Justice Department had hired former Senator Roger W. Jepsen and his former Administrative Assistant so that they could work on the Bicentennial of the Constitution. Please outline their duties as it seems to fly in the face of Sec. 5(a) of P.L. 98-101 which provides for the Commission to appoint the staff director?

ANSWER:

Mr. Jepsen has been serving as the Acting Director of the Commission until it has had an opportunity to select its own Director. He has played a key role in developing the necessary budget materials so that this important initiative can get underway.

QUESTION:

What other Justice personnel have been assigned to Bicentennial activities and what has been the cost of the personnel assigned to date? To which appropriation are these costs being charged?

ANSWER:

Only Mr. Jepsen and Mr. Donald E. Anderson have been assigned by the Department. Salary and benefits costs for both individuals through April 15, 1985 are estimated to be $48,000.

Current salary expenses are being charged to the Office of Legal Policy, within the General Administration appropriation. However, the proposed supplemental request to support the Commission has the necessary language so that the Department of Justice will be reimbursed for its expenses.

Border Patrol Resources

QUESTION:

Please provide for the record an exhibit, similar to the one furnished last year, showing the distribution of the Border Patrol as of March 31, 1985.

ANSWER:

The following chart provides the requested information.

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BORDER PATROL AUTHORIZED AND ON DUTY 1981 - 1985

	FY 1981 (January)		FY 1982 (April)		FY 1983 (May)		FY 1984 (April)		FY 1985 (March)	
	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty
EASTERN REGIONAL OFFICE	3	2	3	2	3	3	3	3	3	3
Buffalo Sector	31	30	31	28	39	37	39	38	39	31
Ogdensburg Sector	28	28	28	26	1/	..	..	..	..	..
Swanton Sector	50	47	51	50	71	67	71	63	71	70
Houlton Sector	34	30	34	34	34	30	34	34	34	33
Regional Totals	**146**	**137**	**147**	**140**	**147**	**137**	**147**	**138**	**147**	**137**
SOUTHERN REGIONAL OFFICE	6	5	6	5	6	5	6	5	6	5
El Paso Sector	410	397	427	402	425	404	425	410	579	422
Marfa Sector	124	116	133	117	133	121	133	128	141	122
Del Rio Sector	223	210	231	213	229	218	229	220	321	264
Laredo Sector	151	142	166	141	166	158	166	197	261	234
McAllen Sector	201	189	211	193	210	201	210	196	267	230
New Orleans Sector	46	37	39	34	39	37	39	39	42	38
Miami Sector	37	30	51	30	74	57	74	54	74	54
Regional Totals	**1,198**	**1,126**	**1,264**	**1,135**	**1,282**	**1,201**	**1,282**	**1,249**	**1,691**	**1,369**
NORTHERN REGIONAL OFFICE	3	2	3	2	3	3	3	3	3	3
Blaine Sector	32	28	32	30	32	32	32	31	33	32
Spokane Sector	28	28	28	27	28	28	28	26	28	28
Havre Sector	30	29	31	27	31	29	31	29	31	30
Grand Forks Sector	36	32	36	33	36	32	35	34	35	33
Detroit Sector	28	22	28	21	28	24	28	23	26	21
Regional Totals	**157**	**141**	**158**	**140**	**158**	**148**	**157**	**146**	**156**	**147**
WESTERN REGIONAL OFFICE	8	6	8	6	8	7	8	7	7	7
Chula Vista Sector	579	554	597	532	595	580	536	551	863	654
El Centro Sector	190	183	211	178	204	198	209	171	305	207
Yuma Sector	186	184	182	170	199	189	199	181	242	213
Tucson Sector	172	175	200	183	182	166	181	174	206	185
Livermore Sector	73	56	66	59	66	56	66	65	66	65
Regional Totals	**1,208**	**1,158**	**1,264**	**1,128**	**1,254**	**1,196**	**1,259**	**1,149**	**1,689**	**1,331**
CENTRAL OFFICE	16	14	57	14	25	18	20	18	24	21
TOTAL	**2,725**	**2,576**	**2,898**	**2,557**	**2,866**	**2,700**	**2,865**	**2,700**	**3,707**	**3,005**

1/ Ogdensburg Sector was closed in June, 1983. Positions from this sector were divided between Buffalo and Swanton.

Positions	1981		1982		1983		1984		1985	
	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty
Officer	2,289	2,218	2,429	2,186	2,413	2,291	2,409	2,281	3,155	2,530
Pilot	59	42	59	42	63	48	63	52	73	58
Support	377	316	402	329	390	361	393	367	479	417
Total	**2,725**	**2,576**	**2,898**	**2,557**	**2,866**	**2,700**	**2,865**	**2,700**	**3,707**	**3,005**

ADDITIONAL QUESTIONS SUBMITTED BY SENATOR HOLLINGS

ATTORNEY GENERAL

Automobile Purchases

QUESTION:

Please list, by agency, the number of replacement automobiles authorized to be purchased, the date on which they were ordered, and the date the last one was received for each of the last three fiscal years.

ANSWER:

FY	Bureau	Number Authorized	Number Ordered	Date Ordered	Date Received
1982	FBI	1,500	989	12/81	9/82*
	DEA	310	1	3/82	8/82
			3	4/82	8/82
			4		
	INS	430	92	2/83	6/83
			295	3/83	7/83
			387		
	FPS	27	1	4/82	6/82
			1	5/82	8/82
			1	5/82	4/83
			1	7/82	7/83
			4	9/82	6/83
			8		
	Total, DOJ	2,267	1,388		
1983	FBI	1,300	1,094	11/82	
			62	3/83	
			10	3/83	
			33	4/83	11/83*
			1,199		
	DEA	277	2	4/83	7/83
			2	4/83	8/83
			1	4/83	9/83
			1	5/83	9/83
			6		
	INS	400	166	1/84	7/84
			6	4/84	12/84
			172		

FY	Bureau	Number Authorized	Number Ordered	Date Ordered	Date Received
	FPS	27	1	2/83	8/83
			3	5/83	7/83
			1	6/83	8/83
			1	6/83	9/83
			1	6/83	10/83
			1	7/83	7/84
			1	7/83	10/84
			1	8/83	9/84
			1	9/83	11/83
			1	9/83	6/84
			12		
	Total, DOJ	2,004	1,389		
1984	FBI	1,200	1,141	10/83	
			59	8/84	11/84*
			1,200		
	DEA	682	1	2/84	6/84
			1	2/84	8/84
			1	3/84	8/84
			1	3/84	9/84
			2	3/84	9/84
			6		
	INS	400	116	12/84	3/85
			7	12/84	5/85
			7	1/85	5/85 est.
			36	2/85	5/85 est.
			17	2/85	5/85 est.
			183		
	FPS	31	1	3/84	7/84
			1	4/84	7/84
			1	4/84	6/85 est.
			1	6/84	6/85 est.
			3	8/84	11/84
			1	8/84	6/85 est.
			1	10/84	12/84
			9		
	Total, DOJ	2,313	1,398		

*Last vehicle received

QUESTION:

Were the automobiles received within 90 days of their being ordered? If not, why were the deliveries delayed?

ANSWER:

Federal Bureau of Investigation. The delivery of vehicles normally exceeds 90 days after they have been ordered for the following reasons:

The General Services Administration (GSA) normally requires 90 days to process and award a contract after the order has been delivered to them.

The vehicle manufacturers usually require 90 - 120 days after being awarded a contract in order to build and deliver a vehicle.

Specialized vehicles, e.g., 18-foot box trucks, frequently require longer periods of time because after the vehicle is ordered, built and delivered it then goes to a separate company to have modifications, additional equipment, etc., installed.

Drug Enforcement Administration. Vehicles in each of the previous three fiscal years were not received by DEA within the 90-day time frame. The average time from date of award of contract to receipt was 139 days for the 1982-1985 fiscal years. In 1984 and 1985, DEA and FBI, by performing some aspects of the contracting process previously done by GSA, have had vehicles ordered almost two months earlier than in 1982 and 1983.

Vehicles were not received within the 90-day time frame for a number of reasons:

The FY 1982 contracts specified shipping dates of 120 days from the date of contract award. The 1983 contracts specified 90 days, the 1984 contracts specified 45 days in most cases and the 1985 contracts specified 45 days. Vehicles purchased by DEA are special application, police vehicles which generally take longer to move through the factories of the automobile manufacturers. The primary reason for this longer time period has to do with the scheduling of production runs within the factories. In our opinion, DEA's police-type vehicles are ordinarily scheduled near the end of production runs, following the larger orders traditionally placed by dealerships and other large fleet buyers.

Once vehicles leave the assembly plants of the manufacturers, companies responsible for transportation of the finished product to final destinations are under no real pressure to deliver vehicles within a specified time period other than normal business requirements.

Immigration and Naturalization Service. This agency maintains a schedule of the dates on which a puchase order is sent to GSA, and the date GSA makes an award, shown as the date ordered above. GSA must then consolidate purchases into a contract. Our policy has been to submit Fall orders for Spring/early Summer delivery and that requirement has, in the norm, been met. Only the FY 1984 order of December 1984 was completed within 90 days.

Federal Prison System. Of the total of 29 vehicled ordered in 1982, 1983 and 1984, 12 were delivered within 90 days as indicated in the table above. In those instances where the General Services Administration (GSA) explained the delay, it was attributed to vehicle orders being placed/received too late for inclusion in the then active procurement cycle; hence, the orders were held until commencement of the GSA's next procurement cycle. For the three vehicles ordered in April, June and August, 1984, for which delivery has not been made, the GSA has advised of a June 1985 delivery date.

In the past, the Federal Prison System (FPS) has ordered fewer replacement vehicles that authorized, primarily because of insufficent funds. We have relied heavily on the acquisition of surplus government vehicles to fill many of our vehicle requirements.

Just recently, however, FPS ordered 20 replacement vehicles (of a total 30 authorized for the current fiscal year) through GSA on an attractive offering from Chrysler for which funds were reprogrammed in order to accomplish the purchase. This order will result in a savings of approximately $45,000, a discount of about 23 percent from the regular purchase price. The GSA has advised the Bureau that the vehicles will be delivered within 90 days.

QUESTIONS SUBMITTED BY SENATOR INOUYE

ATTORNEY GENERAL

Asbestos Torts Litigation

QUESTION:

In last year's testimony, the Department's representative stated that "asbestos litigation is on the brink of becoming the largest, single case type in legal history." The Departmental testimony further stated that "At the end of 1983, the Torts Branch was defending over 1,700 cases involving $71 million". You also provided some detail through the use of charts of the Department's workload.

This year, however, little information is provided.

Please provide an updated version of last year's "Accomplishments and Workload" charts for "Litigation in Defense of Monetary Claims (Asbestos Only)." Please include information on cases pending, received, and terminated; results, including dollars defended, awarded and saved; and attorney workyears used. In order to provide a clearer historical record and to give the Committee a notion of what to expect in the future, please provide figures for the last ten years and projections through the 1986 budget year.

ANSWER:

The requested chart is attached. It provides all the requested information for the years 1980 through 1986. The data for prior year are derived from the Civil Division's automated case management system which was established in 1980. Data for years prior to 1980 are incomplete and, therefore, not shown on the chart. The estimates for 1985 and 1986 are based on our assessment of the likely future course of the litigation based on historical trends and published studies such as those referenced in and the one appended to the recent Fifth Circuit decision in Jackson v. Johns-Manville, No. 82-4288 (5th Cir., January 21, 1985). A copy of this decision has been provided to the Committee.

WORKLOAD AND PERFORMANCE SUMMARY

Litigation in Defense of Monetary Claims -- (Asbestos Only)	1980 Actual	1981 Actual	1982 Actual	1983 Actual	1984 Actual	1985 Estimate	1986 Estimate
1. Total Cases							
Pending -- start-of-year	98	197	764	1,217	1,785	2,744	4,362
Receipts	134	573	550	582	1,002	1,668	2,760
Terminations	35	6	97	14	43	50	50
Pending -- end-of-year	197	764	1,217	1,785	2,744	4,362	7,072
2. Results							
Dollars Defended (in Millions)							
- Begin Year and New Receipts	$882	$1,183	$1,538	$1,996	$5,715	$10,217	$16,216
- Terminated Cases	$58	$35	$326	$49	$617	$716	$716
Dollars Awarded (in Millions)	...	...	...	...	...	...	...
Dollars Saved (in Millions)	$58	$35	$326	$49	$617	$716	$716
3. Attorney Workyears Used	6	6	11	19	28	29	31

QUESTION:

In recent years, I understand you have formed a special group of staff and attorneys for handling asbestos litigation. Please provide a history of the organization of this group. When was it formed? I understand you asked for and received a special appropriation. Please describe this process. What has been the funding history of this group? How much are you requesting for FY 1986?

ANSWER:

In July 1983 the Department centralized, in the Torts Branch of the Civil Division, responsibility for the conduct of the asbestos litigation.

In 1978 the Division participated in the pretrial settlement of the only pending asbestos action in which the United States was a party. That case ("Tyler I"), arising out of a Unarco and Pittsburgh Plate Glass insulation plant in Tyler, Texas, resulted in a settlement of $20 million being paid to 448 individual plaintiffs. The United States contributed $5.75 million to settle claims in excess of $300 million. Since that time, however, the Government has universally refused voluntarily to enter into settlements to pay for asbestos-related injuries. The Government did enter into a "settlement agreement" in the "Tyler II" case to assist plaintiffs in conducting foreign litigation. As of today, there have been no final judgments against the United States.

During the five years that followed the Tyler I case, the number of asbestos actions in which the United States was named a party increased rapidly and the Government's potential liability increased exponentially. Due to the inherently difficult, complex and sensitive nature of the litigation, all asbestos cases in which the United States was a party were originally handled by Civil Division attorneys. This resulted in a highly centralized and coordinated litigation effort. By April 1981, an increase in the number of cases involved and a severe budgetary crisis in the Civil Division compelled the delegation of all but three or four of the most significant asbestos cases to the U.S. Attorneys. Notwithstanding the delegation of primary litigating authority, the Civil Division attempted to closely monitor the cases in an effort to ensure consistency and effectiveness in the nation-wide asbestos litigation effort.

By late 1982, as the litigation against the Government continued to expand and potential Government liability increased, it became apparent that the continued decentralization of the litigation and the inability of either the U.S. Attorneys or the Civil Division to assign adequate resources to defend the cases would compromise the Government's position and result in adverse judgments and settlements measured in the billions of dollars. Consequently, in early 1983, we submitted a supplemental appropriations request to Congress to secure the resources needed to centralize handling of the cases by the Civil Division. The supplemental appropriation which was enacted for FY 1983 was for 44 positions and $4,360,000. This funding was in addition to the staff which was assigned to the litigation from the Civil Division's budget existing at that time. Since approval of the supplemental, we have maintained the authorized staffing at 52. No increases in staff or funding have been sought for 1986.

A major part of the funding approved in the 1983 supplemental was for automated litigation support services for the asbestos cases. These funds are used to secure contractor support to acquire, screen, code and automate the collection of evidentiary materials related to the asbestos cases and to computerize transcripts of depositions and trials. The number of identified documents potentially relevant to the asbestos litigation exceeds 1.5 billion. To date we have processed approximately 128 million of these documents and have computerized 1,412 depositions involving over 400,000 pages of transcripts. Without the type of instant access which the use of automated litigation support and computerization provides, the Division's attorneys would be unable to defend the Government adequately in these cases.

The following represents an approximation of our total asbestos-related expenditures for 1983 through 1986. These figures include personnel and overhead expenditures as well as automated litigation support costs.

1983	1984	1985	1986
$4,632,000	$5,422,000	$9,703,000	$9,768,000

Please note that these are approximations of expenditures. We are preparing a detailed analysis of the expenditures for the General Accounting Office for the review which they have been requested to conduct. Also, please note that these are approximations for the Civil Division only. They do not include expenditures for the Federal Bureau of Investigation (which performed some asbestos-related work during 1979 and 1980), the Lands and Natural Resources Division (which performed some asbestos-related work during 1981) or the Antitrust Divison (which also performed some asbestos-related work during 1981).

QUESTION:

In last year's justification, you stated that the branch is involved in asbestos litigation involving over 90,000 claimants and $42 billion. Please give sources and calculations used to reach these numbers.

ANSWER:

Determining the potential scope and monetary exposure of the United States in the asbestos litigation is an extremely difficult calculation because in most of the cases the Government is a third-party defendant to the manufacturers, who seek contribution or indemnity from the United States. Due to the third-party nature of the Government's involvement, the Department of Justice has little independent means to assess potential exposure in any given lawsuit, but has estimated the Government's exposure as best we can, taking all of the following into consideration.

The United States could be exposed to monetary liability for asbestos injuries far in excess of the limited number of suits in which it is already named as a party. With the filing of voluntary bankruptcy by major asbestos manufacturers and an expected new wave of asbestos property damage suits, the United States may eventually become the only potential defendant with sufficient assets to satisfy asbestos-related judgments. Thus, there is increasing pressure on courts from the industry to find ways to force the United States to shoulder a share of the financial burdens of asbestos-related injuries. Additionally, the industry has been pressing the courts for recognition of the "government contracts defense" in the asbestos litigation. Success by the industry in avoiding liability under this theory would likely lead to increasing numbers of suits by non-Federal employees against the United States directly.

Despite our success in litigation to date, as a result of the Supreme Court's decision in Lockheed v. United States, 103 Sup.Ct. 1033 (1983), the possibility that the United States may in some way be found liable for claims asserted for asbestos-related injuries must be recognized for contingency planning purposes.

Our assessment of contingent Government exposure began with estimates by various epidemiologists as to the number of asbestos-related lawsuits that might be anticipated. These run from a low of 76,620, as proposed in the bankruptcy proceedings of the Manville Corporation, the largest asbestos products manufacturer, (this number has been increased subsequently to 150,000) to as many as 200,000, as predicted by Dr. Irving J. Selikoff of the Mt. Sinai School of Medicine, a leading expert on asbestos-related illness. Some predict the numbers to be even higher. A conservative range of ultimate litigating claimants would be 100,000 to 200,000. Based on the data published by the Asbestos Litigation Reporter, 72.8 percent of all cases which have gone to trial have resulted in a decision favorable to the claimant. Applying this factor to the predicted number of claimants places the range of plaintiffs who will eventually recover damages between 72,800 and 145,600.

So far, on the average, the recovery for successful plaintiffs ranges from $270,000 to $332,724. Assuming a low estimated average of approximately $250,000 per successful plaintiff, the volume of ultimate judgments could range from $18.2 billion to $36.4 billion. To the extent, therefore, that the United States ultimately may bear a significant portion of the total asbestos-related liability of the industry, the potential exposure of the Government, based on current dollars, could be a high percentage of the $18.2 to $36.4 billion.

The Manville Corporation presently has assets of $2.3 billion. For purposes of estimating the amount of Government exposure, it can be assumed that a forced liquidation of Manville under bankruptcy would yield assets of 50 percent of its total net assets, or $1.15 billion, with the remainder of the industry worth an additional $1.15 billion. If the United States were forced to bear only those costs and judgments against it in excess of the total liquidable worth of the industry (approximately $2.3 billion without regard to insurance proceeds of $4 to $10 billion which are the subject of pending litigation), the potential liability of the United States could be a substantial portion of the remaining liability of between $15.9 billion and $34.1 billion.

All of these data were not available during 1983 when our 1985 budget request was developed. The estimated 90,000 claimants and $42 billion at issue stated in our 1985 request were the most accurate we could produce at that time. We used the number of cases observed at that time, mortality projections, inferences, judgments made on the basis of almost no directly relevant data, published reports and congressional testimony by Epidemiology Resources, Inc., of Massachusetts and predictions by Manville Corporation at that time on the number of asbestos-related law suits which would be filed through the year 2009. The cases in which the United States is involved as a party today include approximately 98,000 individual underlying claims totalling more than $6 billion.

QUESTION:

With what other agencies does the Department of Justice coordinate asbestos litigation? What is their responsibility with regard to these cases and their funding for asbestos-related work, and how many staff and attorneys are involved in that work?

ANSWER:

The Department of Justice coordinates with a number of agencies as part of the asbestos defense effort, primarily the Department of the Navy, the General Services Administration, the Department of Health and Human Services, the Department of Labor and the Maritime Administration. These agencies are responsible for providing the background information and documentation necessary for the Government's defense and for assisting the Department of Justice in responding to voluminous discovery requests. They are not involved in the litigation process per se.

These agencies have been working with the Department of Justice on this litigation for the period indicated below. In addition, the Federal Emergency Management Agency was involved with the litigation during 1982.

Department of the Navy	- 1977 to present
Department of Labor	- 1979 to present
Department of Health and Human Services	- 1979 to present
General Services Administration	- 1979 to present
Maritime Administration	- 1978 to present

We have been advised that the current agency staffing for asbestos support is as follows:

Department of the Navy: The Office of the General Counsel (OGC) in Washington currently has four attorneys who spend approximately 80 percent of their time and 10 paralegals who spend all of their time working on asbestos litigation. The Navy also has three shipyard attorneys (Norfolk, Mare Island and Pearl Harbor) assigned full-time to asbestos. Moreover, other Navy OGC attorneys stationed at eight public shipyards and 16 private shipyards devote a significant portion of their time to asbestos matters. These figures do not include Navy or other military personnel personally handling asbestos administrative claims.

Department of Labor: The Department of Labor has assigned the following personnel to asbestos litigation support, including the handling of administrative claims: one attorney on a full-time basis, one attorney on a part-time basis, two paralegals devoting approximately 70 percent of their time, three part-time law students and six clerical personnel.

Maritime Administration (MARAD): MARAD has assigned two attorneys full-time, three attorneys part-time and two paralegals on a three-quarter time basis to support the asbestos litigation. The MARAD records office (five persons) also devotes approximately one-third of its time to asbestos litigation matters.

General Services Administration (GSA): GSA has assigned two attorneys full-time, two attorneys part-time, four non-attorneys full-time and four non-attorneys part-time to the litigation. The GSA regional offices have recently completed a massive compilation of GSA asbestos-related documents, an effort requiring substantial personnel involvement in each GSA regional office. For example, GSA in Denver hired four non-attorneys on a full-time basis for six months for their document search.

Department of Health and Human Services (HHS): HHS has assigned one attorney to support the litigation on a part-time basis.

The Department of Justice does not have information on the expenditures which these agencies are incurring in support of our litigation of the asbestos cases.

QUESTION:

In this year's justification, you mention the possible weakening effect of recent court decisions on the Government's defense against liability for asbestos exposure. Please summarize the Shuman, Glover, and Lockheed decisions. If those decisions are validated by the courts, what is your estimate of the number and amount of claims which would have to be paid by the Federal Government during the next ten years due to court awards and settlements?

ANSWER:

Glover was an indemnification suit to recover a settlement paid by asbestos manufacturers to a civilian employee of the Navy who was exposed to asbestos at the Norfolk Naval Shipyard in Virginia, one of the few jurisdictions prior to Lockheed to allow such suits. The Government prevailed on the merits of the noncontractual indemnification claims in 1979, Glover v. Johns-Manville, 525 F. Supp. 894 (E.D. Va. 1979). This ruling was affirmed by the Fourth Circuit in 1981, Glover v. Johns-Manville, 662 F.2d 225 (4th Cir. 1981), and the Supreme Court refused to considered the manufacturers' appeal.

The Supreme Court decided in Lockheed Aircraft Corp. v. United States, 460 U.S. 190 (1983), that the exclusive remedy provision of the Federal Employees Comprehensive Act (which, like nearly all workers' compensation laws, provides benefits to employees like Glover without regard to fault in exchange for immunity from tort suits) did not bar third-party indemnity suits against the Government, thus opening the door to more suits like Glover across the country. Nevertheless, we contend that under the Federal Torts Claims Act the Government is not subject to liability to asbestos producers for contribution or indemnity unless such a remedy exists against a private compensation-paying employer under state law.

A possible exception to this rule exists where the Government's alleged neglect occurred in a so-called "dual capacity," such as owner of the vessels being repaired or constructed at naval and contractor shipyards. In Shuman v. United States, C.A. No. 78-1407-S (D. Mass., 1984), the trial court held that the Government was liable to a shipyard worker in such a case. If Shuman is affirmed, and the dual capacity doctrine is applied against the Government, the United States could be held liable for all or part of the tort damages paid and payable to all shipyard workers injured by exposure to asbestos. It has recently been estimated by the Fifth Circuit that asbestos manufacturers may ultimately be the subject of 200,000 asbestos personal injury suits and $38 billion in liability. Jackson v. Johns-Manville, No. 82-4288 (5th Cir., January 21, 1985). The Rand Corporation has estimated that approximately 40 percent of all asbestos litigation arises from shipyard exposure. Variation In Asbestos Litigation Compensation and Expense, The Rand Corporation (1984), p. 26. Thus, the potential exposure of the United States in shipyard litigation, should dual capacity theories be upheld, could reach 80,000 cases and $15 billion.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

ATTORNEY GENERAL

Justice Assistance Program

QUESTION:

I'm pleased that the Justice Department is moving ahead with regulations to implement the Justice Assistance Program, established by the Justice Assistance Act of 1984. I understand that the final regulations should be issued by the end of April or the beginning of May. One thing that was brought to my attention during the comment period was that the Justice Department's plans for implementing the new program and for defining eligibility may be too rigid. In fact, I was disturbed to hear from a city manager in Arkansas that he thought that few if any applications would be made for funds if the proposed regulations were adopted. General, has the Department broadened its program guidelines at all in response to such comments from local law enforcement and city officials?

ANSWER:

The Department's regulations for the block grant program do not impose any requirements other than those in the legislation itself. In order to assure effective use of limited funds, the Justice Assistance Act targets money on 18 categories and on programs that have a high probability of improving the criminal justice system. In addition, it prohibits the use of monies for equipment or personnel costs unless these are an incidental and necessary part of an improvement program, and it requires jurisdictions to share in program costs on a 50/50 basis.

While the regulations identify 18 specific programs such as Career Criminal and Community Crime Prevention, they also allow states and localities to propose any other programs as long as the program meets the high probability standard and falls within one of the legislative categories. Thus, the regulations provide significant funding flexibility to state and local governments.

The Department received a total of 35 written responses to the regulations and has accommodated the comments to the extent possible. Several respondents urged the Department to add requirements and these suggestions were rejected uniformly. Our policy has been and remains to provide maximum discretion to the states who are responsible for administering the block grant at the state level. The regulations have been revised, however, to clarify that applicants are not limited to the 11 specific programs, but may propose others.

Resale Price Maintenance

QUESTION:

General, I for one was disturbed by the Justice Department's filing of an amicus brief in Monsanto v. Spray Rite, urging the Supreme Court to clarify the law in cases involving resale price agreements. This Subcommittee and the Senate Committee on Small Business have also expressed grave concerns about the Department's action in Monsanto. Although the Court found for the plaintiff in the Monsanto case, it did in fact toughen the standard for inferring resale price maintenance. It is my understanding that it is no longer adequate to show that a complaint by a resaler about a distributor's price resulted in a resaler's termination. It is now necessary to prove that the distributor and its non-terminated resalers were not acting independently. Does the Justice Department support this new standard?

ANSWER:

In Monsanto Co. v. Spray-Rite Service Corp., 104 S. Ct. 1464 (1984), the Supreme Court held that before a practice is characterized as a resale price restraint, there must be evidence of an agreement between a supplier and its distributors as to resale prices. In short, mere evidence that a manufacturer terminated a dealer in response to another dealer's price-related complaint is not enough; there must be evidence that tends to exclude the possibility that the manufacturer and non-terminated distributors were acting independently. This holding is well-rooted in Sherman Act case law. The courts have long held that a manufacturer generally has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently. United States v. Colgate & Co., 250 U.S. 300, 307 (1919). Accordingly, the Supreme Court's Monsanto decision is merely a clarification of well-established precedent, rather than an entirely new standard.

The Justice Department supports the evidentiary standard set forth in Monsanto, which comports with sound economic reasoning as well as established case law. As the Court pointed out in Monsanto, "[i]n order to assure an efficient distribution system, manufacturers and distributors constantly must coordinate their activities to assure that their products will reach the consumer persuasively and efficiently. To bar a manufacturer from acting solely because the information upon which it acts originated as a price complaint would create an irrational dislocation in the market." 104 S. Ct. at 1470.

QUESTION:

General Meese, I am very concerned, in light of the Spray-Rite case and the Justice Department's actions in that case, that this Administration is determined to try to undermine the per se standard across the board. Some radical economists have suggested that even the most outrageous kinds of conduct--for example, even price fixing--may be justified by some kind of economic hocus-pocus. I will not try to list here all the reasons for having a per se standard, although I thought all of us could at least agree that it helps lend predictability of result to the law--but I wonder if you could comment on whether you have any agenda with regard to elimination of the per se rule?

ANSWER:

The Department has no agenda with regard to elimination of the per se rule. As the Supreme Court has recognized, a restraint is per se unlawful if it has a "pernicious effect on competition and . . .

lack[s] any redeeming virtue." Northern Pac. Ry. v. U.S., 356 U.S. 1, 5 (1958). For example, naked agreements among competitors to set prices are per se unlawful because they are aimed almost certainly at increasing price and restricting output and they are highly unlikely to offer plausible competitive benefits. More generally, a practice is per se unlawful if it appears highly likely that it will restrict the output of the collaborators or increase their price and there is no plausible procompetitive justification for the practice. The Supreme Court has made clear in several recent decisions that the per se rule may not be applied in situations where the conduct in question is reasonably necessary to achieve significant efficiencies or where the requisite "pernicious effect on competition" is absent.

NCAA v. Board of Regents of University of Oklahoma, 104 S. Ct. 2948 (1984); Broadcast Music, Inc. v. Columbia Broadcasting System, 441 U.S. 1 (1979); Continental T.V., Inc. v. G.T.E. Sylvania, Inc. 443 U.S. 36 (1977).

QUESTION:

Would there be any circumstance in which you think a price fixing agreement should be judged under the rule of reason rather than under the per se standard?

ANSWER:

No. As explained above, the Department believes that naked agreements among competitors to set prices should be viewed as per se unlawful because they are almost certainly aimed at increasing price and restricting output, and they are highly unlikely to offer plausible competitive benefits. Accordingly, the Department is committed to prosecuting as per se unlawful collusive price fixing agreements among competitors, such as bid rigging.

In recent years the Department has criminally prosecuted a large number of parties to per se illegal horizontal agreements. Specifically, during 1981-1984 the Department averaged 91 criminal antitrust prosecutions per year, more than twice the average of 38 cases per year for 1977-1980. In FY 1984, the Department set a new one-year record by bringing 100 criminal antitrust prosecutions.

U.S. Marshals Service Resources

QUESTION:

General Meese, a few months ago Marshal Gray of the Eastern District of Arkansas--who, by the way, was selected last year by the Marshals Service as one of the outstanding U.S. Marshals in the country--was good enough to share with me the fact the Marshals Service is requesting an enhancement in its funding this year. I understand the President has included this request in his budget request, and I want you to know that I have always been a strong supporter of the Marshals Service and will do whatever I can to help with this request. I would appreciate your comments on the status of the Marshals Service funding and whether it is adequate to meet their very large responsibilities.

ANSWER:

The U.S. Marshals Service's 1985 appropriation coupled with the Administration's request of an additional 374 positions and $8,138,000 in the 1985 supplemental request for the effects of the Bankruptcy Amendments and Federal Judgeship and the Comprehensive Crime Control Acts of 1984 is adequate to fund the missions of the Marshals Service. We will continue to look for ways in which the Marshals Service can implement the child visitation provisions for the Witness Security program as provided in the Comprehensive Crime Control Act of 1984.

QUESTIONS SUBMITTED BY SENATOR CHILES

ATTORNEY GENERAL

New Cuban Immigrants

QUESTION:

Is there a time schedule set for the new arrivals and what are the anticipated numbers? We are aware that our interest section in Havana is processing visas.

ANSWER:

There are two basic groups of new arrivals being processed at the American Interests Section in Havana. The Immigration Service has set some general timetables for the processing of ex-political prisoners and their families. The refugee ceiling for Latin America and the Caribbean for FY 1985 has already been set at 3,000 people through Presidential consultation with Congress. From October 1984 to February 1985, 38 such refugees and family members have been admitted to the United States. It is anticipated that 50 additional Latin American and Caribbean refugees and family members will be processed outside of Cuba for entry during the current fiscal year.

In March 1985, 128 refugees and family members were processed and approved in Havana, and in April, 778 additional people were processed and approved. Service officers anticipate processing and approving 2,000 additional people during May, June, and July for admission to the U.S. in the current fiscal year. Thus, we anticipate coming very close to the 3,000 ceiling during the current fiscal year.

The Department of State also is processing qualified immigrant visa seekers at the American Interests Section. During March and April, approximately 650 immigrant visas were issued. The Department anticipates processing and approving approximately 3,000 additional immigrant visas during May, June, and July, for entry during the current fiscal year.

It should be noted that once INS or State Department processing is completed and approval is given, the applicant must obtain an exit visa and passport from the Cuban government before entering the United States. INS or State Department approval is valid for entry into the United States within four months. This approval can be extended if an individual is not allowed to depart Cuba within the four-month validity period.

QUESTION:

Is it possible to have a profile of the entrants - for example, how many are school age, how many are expectant mothers, and how many are elderly?

ANSWER:

The Service will capture some basic biographic and demographic information on immigrants entering the United States from Cuba, as we do with all newly admitted permanent residents. Such data as age, sex, martial status, and state to which destined will be captured and available within sixty days after entry.

The Service is also planning to conduct a survey, using statistical sampling methods, of the Mariel Cubans who will be adjusting to permanent resident status over the next year. The analysis of this survey data will give us information on whether and when these individuals intend to naturalize; whether and when they intend to file visa petitions to benefit relatives outside the United States; as well as which relatives may come to the United States as a result of these petitions and where they may settle. It is anticipated that this type of survey will be of immense value to the Service in planning future workloads. We will, of course, share the results of this survey with other government agencies and with members of Congress.

QUESTION:

What status will be afforded to these new entrants, including the political prisoners and their families?

ANSWER:

Individuals who enter the United States with immigrant visas issued by the Department of State will be admitted as lawful permanent residents. Ex-political prisoners and accompanying family members will be admitted as refugees. As refugees, they will be eligible to become lawful permanent residents after one year.

QUESTION:

What efforts are being made for sponsorship and settlement of these new entrants?

ANSWER:

To be eligible for issuance of an immigrant visa, an applicant must establish to the Department of State before entry that he or she is not likely to become a public charge after entry into the United States. Applicants who cannot document sufficient personal finances to guarantee this must provide documentary evidence of guaranteed employment in the United States, in accordance with Section 212 (a) (15) of the Immigration and Nationality Act. This sponsorship arrangement includes expenses incurred in travel, food, housing, etc. It should be pointed out that these provisions are exactly the same for all immigrants to the United States from any country. As lawfully admitted immigrants, these people do not generally qualify for resettlement programs. In addition, many Federal and state programs include the sponsor's financial assets when considering financial eligibility.

Ex-political prisoners and accompanying family members approved as refugees must be sponsored by a responsible individual or organization. Once a refugee is ready to be approved, the Refugee Data Center in New York is contacted to provide a sponsor. Refugees from Cuba will be assisted in a similar fashion to refugees from any other part of the world approved for the U.S. refugee program.

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

ATTORNEY GENERAL

Interagency Coordination in Narcotics Enforcement

QUESTION:

In your prepared remarks, you point to the Organized Crime Drug Enforcement Task Forces as an example of the kind of coordinated law enforcement that is "contributing to success" in combatting drug trafficking and other forms of organized crime. The OCDE report, issued the first of this month, stresses the same point -- that coordination and concentrated action are the keys to a successful attack on criminal organizations and their leaders. Let me say that I agree wholeheartedly, cooperation among our enforcement agencies is absolutely indispensable. But, I have a few questions:

In addition to OCDE Task Forces, we also have the National Narcotics Interdiction System operating out of the Vice President's office. My understanding is that both have regional organizations. Each, for example, has an operation in New York which covers the New York/New Jersey area.

How is effective coordination between these organizations assured? For example, are there circumstances in which OCDE investigators would want the subject of their investigation to receive shipments of illicit drugs?

In such cases, how does the OCDE know that NNBIS isn't going to interdict the shipment?

ANSWER:

The OCDE Task Forces maintain a close working relationship with the NNBIS regional offices. A specific OCDE individual usually is assigned to be the liaison with the NNBIS staff. For example, in the Southeast Task Force, the Coast Guard Coordinator serves as the NNBIS liaison. If that Task Force, as part of an investigation, needs to allow a specific shipment of illicit drugs to reach one of its targets, the Task Force liaison would contact the NNBIS regional office and request that drug contraband not be interdicted at the border. The Task Force would then keep NNBIS apprised of its investigation and the eventual seizure of the drugs.

QUESTION:

You also chair the National Narcotics Enforcement Policy Board, which was mandated by the Comprehensive Crime Control Act of 1984.

How will the Board relate to the OCDE program and NNBIS?

What specific measures do you plan to propose to assure better coordination in our narcotics enforcement effort?

ANSWER:

The Board was created by Congress to:

1) review, evaluate and develop United States Government policy, strategy and resources with respect to illegal drug law enforcement efforts, including budgetary priorities and a national and international drug enforcement strategy;

2) facilitate coordination of all United States Government efforts to halt national and international trafficking in illegal drugs; and

3) coordinate the collection and evaluation of information necessary to implement United States policy with respect to illegal drug law enforcement.

The Vice-President is a member of the Board and therefore represents NNBIS. The Board has, as one of its agenda items, more effective coordination of all interdiction efforts. I believe that the National Drug Enforcement Policy Board will provide an excellent forum for assuring better coordination in our narcotics enforcement efforts.

Within the Department of Justice, we are looking at ideas which would consolidate a number of critical functions of the Drug Enforcement Administration and the Federal Bureau of Investigation. We believe that a number of functions can be consolidated to assure that our principal drug enforcement agencies work more closely together.

QUESTIONS SUBMITTED BY SENATOR COCHRAN

ATTORNEY GENERAL

Witness Security Program

QUESTION:

Last fall, as a part of the Comprehensive Crime Control Act, legislation was enacted to improve the operation and administration of the Federal Witness Security Program. That legislation created a compensation fund for the victims of protected witnesses. The legislation requires the Attorney General to establish the guidelines and procedures for the making of payments under this section.

Have these guidelines and procedures been established?

ANSWER:

The guidelines and procedures for the administration of the Victims Compensation Fund are currently being drafted. The language of the statute creating this Fund has raised a number of difficult problems of interpretation which we have been endeavoring to resolve as quickly as possible. We are attempting to resolve these questions being mindful of the Congress' intent, however, the legislation may be more restrictive than some members intended. We are making every effort to see to it that once the program is established it will run smoothly and accomplish the objectives the Congress envisioned.

QUESTION:

Is a draft of the regulations available for review?

ANSWER:

Not as yet. Although a copy of the draft of the guidelines and procedures has been drawn, it has not been staffed to the extent that it would be appropriate for external release.

QUESTION:

What is the time table for finalizing these regulations?

ANSWER:

The final format of the guidelines and procedures is expected to be completed within the next ninety days.

QUESTION:

The legislaton provides compensation to a victim of a crime committed by "any person during a period in which that person is provided protection under this chapter."

How has this language been interpreted by the Department?

ANSWER:

The Department has not yet approved the draft of these guidelines and procedures which contains the interpretation of the statute. As soon as we have approved the draft we will furnish a copy to you.

QUESTION:

As you know, the intention of Congress in approving retroactive application was to provide compensation to the victims of Marion Albert Pruett. Does the Department intend to provide coverage for the victims of Marion Albert Pruett?

ANSWER:

The Department intends to provide coverage as authorized by the statute. The answer to this question also rests in the guidelines which are not yet finalized. The Office of Enforcement Operations which authorizes individuals into the Program and the Marshals Service which administers the Program have, since the inception of the Program, recognized three types of "termination" from the Program: (1) voluntary - the Program is a voluntary one and the witness may remove him or herself from the Program at any time. (2) due process - the objectives of the program have been met and the witness has been terminated from the Program; all of the services of the Program remain available to him/her should the person's identity be discovered, and (3) for cause - immediate termination of the witness from the Program for a breach of security or other serious infraction of the Memorandum of Understanding which the witness signs upon his/her entrance into the Program. The protection and services available to a witness cease immediately if the witness is terminated "for cause."

Marion Albert Pruett was authorized into the Program on May 3, 1978. On April 21, 1981 - in writing - he terminated himself voluntarily from the Program.

QUESTION:

When does the Department anticipate that the program will be operational? That is, when will the Department accept applications, and when do you expect payments can be made?

ANSWER:

The Department will accept applications for awards at anytime. It is anticipated that within the next one hundred and twenty days, the program should be operational, providing the Congress appropriates funding to establish a source from which to pay awards. The Department of Justice has requested a 1985 supplemental request of $525,000 within the Fees and Expenses of Witnesses appropriation for this purpose. Payments from the Fund can be made after a claim has been reviewed and investigated.

QUESTIONS SUBMITTED BY SENATOR D'AMATO

ATTORNEY GENERAL

Drug Enforcement Resources

QUESTION:

Mr. Meese, the budget for the Department of Justice was increased by $318 million last year over the FY 1984 level. The Department has been very productive with that increase, but we haven't come anywhere near stopping the distribution of the drugs that feed the addictions of millions of Americans, and which cause more than 50 percent of all crime. If we were to provide you with additional DEA agents and even more prosecutors than the 199 new ones you have requested can you honestly say you couldn't find productive ways to employ them? Aren't there drug trafficking organizations, here and overseas, that warrant increased investigation? Wouldn't you like to do more financial investigations of suspected drug law violators? Can't we do more in the area of criminal forfeitures and money laundering investigations?

ANSWER:

There is no doubt that the scale the drug trafficking enterprises currently in operation in the United States exceeds the capacity of the Federal Government to investigate, prosecute, and imprison individual offenders. In recent years, the Department of Justice has expanded its efforts in this area dramatically. Although some increases are included in the budget request, 1986 is seen primarily as a year that will be devoted to developing organizational capacities. The Department is determined to maintain its existing high standards for the recruitment, training and supervision of personnel. These standards are essential to maintaining the quality of the Department's law enforcement efforts and maintaining quality is essential to producing an effective program. Eventually, more investigators and more prosecutors may be needed, but the increases requested in the President's budget represent the optimum number that can reasonably be absorbed by the affected organizations.

Certainly there are numerous investigative opportunities which could be pursued with increased resources. The Nation's drug enforcement effort will not be successful without increased resources at all levels. The current level of resource commitment, however, is significant. The infusion of FBI investigative staff and the staffing from several other Federal law enforcement agencies through the Organized Crime Drug Enforcement Task Forces has made a substantial impact. More can and will be done in the future.

Considerable progress has been made also in the improvement of investigative techniques with respect to money laundering and these advances will allow the Department to use available resources more effectively in the future. In addition, the Comprehensive Crime Control Act of 1984 expanded the authority of the Department to obtain the forfeiture of assets derived from criminal enterprises. The Department is using these new authorities to seize the assets of more criminal violators, and we expect that usage will continue to grow.

QUESTION:

Please provide a breakdown, by city, in this country and overseas of the number of DEA agents authorized, actually at work, and in training?

ANSWER:

The attached charts provide the requested data as of March 31, 1985. In these charts, ceiling is equivalent to authorized positions and agrees with the authorized agent level shown in the 1986 Congressional budget with the exception of 20 positions reimbursed by the Department of State.

DEA Special Agent Ceiling and On-Board Levels
March 31, 1985

Domestic Offices

	Ceiling	On-Board
Atlanta, GA	33	36
Charleston, SC	7	8
Columbia, SC	4	4
Columbus, GA	2	2
Greensboro, NC	6	5
Knoxville, TN	2	1
Memphis, TN	5	3
Nashville, TN	4	3
Savannah, GA	4	4
Wilmington, NC	5	5
Boston, MA	42	47
Bridgeport, CT	4	5
Burlington, VT	2	2
Concord, NH	2	2
Hartford, CT	12	13
Portland, ME	4	4
Providence, RI	4	3
Springfield, MA	4	4
Chicago, IL	84	89
Fargo, ND	2	2
Hammond, IN	6	7
Indianapolis, IN	9	9
Milwaukee, WI	6	6
Minneapolis, MN	11	12
Springfield, IL	3	3
Dallas, TX	26	29
Alpine, TX	2	2
El Paso, TX	13	13
Ft. Worth, TX	4	4
Lubbock, TX	5	5
Oklahoma City, OK	5	5
Tulsa, OK	2	2
Denver, CO	24	25
Albuquerque, NM	17	17
Cheyenne, WY	3	3
Glenwood Springs, CO	2	1
Las Cruces, NM	3	2
Salt Lake City, UT	5	4
Detroit, MI	63	62
Cincinnati, OH	6	6
Cleveland, OH	11	10
Grand Rapids, MI	5	5
Louisville, KY	5	7
Saginaw, MI	2	2
Philadelphia, PA	43	45
Harrisburg, PA	4	3
Pittsburgh, PA	10	10
Wilmington, DE	2	2
Phoenix, AZ	23	25
Nogales, AZ	4	3
Tucson, AZ	17	13
Yuma, AZ	3	3
San Diego, CA	66	65
Calexico, CA	8	8
Tecate, CA	2	2
San Francisco, CA	46	44
Fresno, CA	9	9
Sacramento, CA	13	13
San Jose, CA	7	8

	Ceiling	On-Board
Houston, TX	53	52
Austin, TX	11	11
Brownsville, TX	6	6
Corpus Christi, TX	2	4
Eagle Pass, TX	4	3
Galveston, TX	5	5
Laredo, TX	6	5
Mc Allen, TX	23	22
San Antonio, TX	20	18
Los Angeles, CA	83	84
Guam	3	3
Honolulu, HI	14	12
Las Vegas, NV	10	9
Reno, NV	5	6
Riverside, CA	7	7
Santa Ana, CA	7	7
Santa Barbara, CA	6	6
Miami, FL	141	135
Ft. Lauderdale, FL	21	18
Ft. Myers, FL	4	3
Gainesville, FL	3	3
Jacksonville, FL	7	8
Marathon, FL	4	4
Orlando, FL	8	8
Panama City, FL	6	6
San Juan, PR	19	15
Tampa, FL	11	11
West Palm Beach, FL	8	5
Newark, NJ	31	34
Atlantic City, NJ	6	8
New Orleans, LA	40	41
Baton Rouge, LA	5	4
Birmingham, AL	3	2
Jackson, MS	5	4
Little Rock, AR	6	7
Mobile, AL	6	7
Shreveport, LA	3	2
New York, NY	240	249
Albany, NY	6	7
Buffalo, NY	8	8
Long Island, NY	12	10
Rochester, NY	5	5
Seattle, WA	30	32
Anchorage, AK	2	2
Blaine, WA	3	3
Boise, ID	3	3
Eugene, OR	5	5
Great Falls, MT	3	3
Portland, OR	8	7
Spokane, WA	3	3
St. Louis, MO	27	28
Des Moines, IA	4	3
Kansas City, MO	8	9
Omaha, NB	3	3
Sioux Falls, SD	2	2
Wichita, KS	2	2
Washington, DC	40	39
Baltimore, MD	36	37
Charleston, WV	5	3
Norfolk, VA	6	6
Richmond, VA	5	5
Total Domestic	1795	1795

Foreign Offices

	Ceiling	On Board
Ankara Turkey	3	3
Istanbul	3	3
Athens, Greece	2	2
Bangkok, Thailand	19	18
Chiang Mai	4	4
Songkhla	3	3
Bern, Switzerland	1	1
Bogota, Colombia	8	11
Barranquilla	4	2
Cali	2	0
Medellin	2	0
Bonn, West Germany	1	2
Frankfurt	4	4
Brasilia, Brazil	5	6
Brussels, Belgium	2	2
Buenos Aires, Argentina	2	2
Cairo, Egypt	1	1
Caracas, Venezuela	2	2
Copenhagen, Denmark	1	1
Curacao, Nether. Antilles	2	2
Guatemala City, Guatemala	2	2
Hong Kong	3	3
Islamabad, Pakistan	3	3
Karachi	4	3
Lahore	4	2
Peshawar	2	1
Jakarta Indonesia	2	2
Kingston, Jamaica	2	2
Kuala Lumpur, Malaysia	2	2
La Paz, Bolivia	7	6
Santa Cruz	3	3

	Ceiling	On Board
Lima Peru	6	6
London, England	2	2
Madrid, Spain	3	3
Manila, Philippines	2	2
Mexico City, Mexico	10	10
Guadalajara	5	3
Hermosillo	3	3
Mazatlan	4	4
Merida	2	2
Monterrey	5	4
Nassau, Bahamas	2	2
New Delhi, India	3	3
Nicosia, Cyprus	2	2
Ottawa, Canada	2	2
Montreal	2	2
Panama City, Panama	6	3
Paris, France	3	3
Marseilles	2	2
Quito, Ecuador	2	2
Guayaquil	3	3
Rome, Italy	4	4
Milan	3	3
San Jose, Costa Rica	2	3
Santiago, Chile	1	2
Santo Domingo, Dom Repub.	1	1
Seoul, South Korea	1	1
Singapore	2	2
The Hague	4	4
Tokyo, Japan	1	1
Vienna Austria	2	2
Total Foreign	195	184

	Ceiling	On-Board
El Paso Intelligence Ctr	24	22
Addison Air Wing	49	47
FLETC	44 [1]	42
Basic Agent School	-	37
Washington Headquarters	123	128
Grand Total	2,230 [1]	2,255

[1] Includes 20 agent positions reimbursed to DEA by Department of State.

QUESTION:

Please provide this Committee with the number of additional personnel requested for each U.S. Attorneys' Office in the supplemental budget request.

ANSWER:

The U.S. Attorneys are requesting an addition of 560 positions in the 1985 supplemental, of which 398 positions will support the 85 new federal judgeships under the Bankruptcy Amendments and Federal Judgeships Act of 1984 (P.L. 98-353) and 162 positions will implement the Comprehensive Crime Control Act of 1984. The attached table reflects the distribution by office.

30-Apr-85 FY 1985 SUPPLEMENTAL JUDGESHIPS/ASSISTANT U.S. ATTORNEYS INITIAL ALLOCATIONS

DISTRICTS	CIRCUIT JUDGES	DISTRICT JUDGES	TOTAL JUDGES	APPELLATE ATTORNEYS	TRIAL ATTORNEYS	TOTAL ATTORNEYS	TOTAL SUPPORT	TOTAL
ALABAMA, N								
ALABAMA, M								
ALABAMA, S		1	1		2	2	2	4
ALASKA		1	1		2	2	2	4
ARIZONA								
ARKANSAS, E								
ARKANSAS, W		1	1		2	2	2	4
CALIFORNIA, N	5		5	4		4	4	8
CALIFORNIA, C		5	5		10	10	10	20
CALIFORNIA, E								
CALIFORNIA, S								
COLORADO		1	1		2	2	2	4
CONNECTICUT		1	1		2	2	2	4
DELAWARE		1	1		2	2	2	4
D.C.	1		1	1		1	1	2
FLORIDA, N								
FLORIDA, M								
FLORIDA, S		3	3		6	6	6	12
GEORGIA, N								
GEORGIA, M		1	1		2	2	2	4
GEORGIA, S								
HAWAII		1	1		2	2	2	4
IDAHO								
ILLINOIS, N	2	5	7	1	10	11	11	22
ILLINOIS, S		1	1		2	2	2	4
ILLINOIS, C								
INDIANA, N		1	1		2	2	2	4
INDIANA, S								
IOWA, N								
IOWA, S								
KANSAS								
KENTUCKY, E	4		4	3		3	3	6
KENTUCKY, W		1	1		2	2	2	4
LOUISIANA, E								
LOUISIANA, M								
LOUISIANA, W		1	1		2	2	2	4
MAINE								
MARYLAND	1	1	2	1	2	3	3	6
MASSACHUSETTS	2	2	4	1	4	5	5	10
MICHIGAN, E		2	2		4	4	4	8
MICHIGAN, W								
MINNESOTA	1	1	2	1	2	3	3	6
MISSISSIPPI, N		1	1		2	2	2	4
MISSISSIPPI, S	2	2	4	1	4	5	5	10

30-Apr-85 FY 1985 SUPPLEMENTAL JUDGESHIPS/ASSISTANT U.S. ATTORNEYS INITIAL ALLOCATIONS

DISTRICTS	CIRCUIT JUDGES	DISTRICT JUDGES	TOTAL JUDGES	APPELLATE ATTORNEYS	TRIAL ATTORNEYS	TOTAL ATTORNEYS	TOTAL SUPPORT	TOTAL
MISSOURI, E		1	1		2	2	2	4
MISSOURI, W								
MONTANA		1	1		2	2	2	4
NEBRASKA								
NEVADA		1	1		2	2	2	4
NEW HAMPSHIRE								
NEW JERSEY		3	3		6	6	6	12
NEW MEXICO								
NEW YORK, N		1	1		2	2	2	4
NEW YORK, E		2	2		4	4	4	8
NEW YORK, S	2		2	1		1	1	2
NEW YORK, W		1	1		2	2	2	4
NORTH CAROLINA, E		1	1		2	2	2	4
NORTH CAROLINA, M								
NORTH CAROLINA, W								
NORTH DAKOTA								
OHIO, N		1	1		2	2	2	4
OHIO, S		1	1		2	2	2	4
OKLAHOMA, N								
OKLAHOMA, E								
OKLAHOMA, W	2	1	3	1	2	3	3	6
OREGON								
PENNSYLVANIA, E								
PENNSYLVANIA, M								
PENNSYLVANIA, W	2		2	1		1	1	2
PUERTO RICO								
RHODE ISLAND		1	1		2	2	2	4
SOUTH CAROLINA								
SOUTH DAKOTA								
TENNESSEE, E		1	1		2	2	2	4
TENNESSEE, M								
TENNESSEE, W		1	1		2	2	2	4
TEXAS, N		1	1		2	2	2	4
TEXAS, E		2	2		4	4	4	8
TEXAS, S								
TEXAS, W		1	1		2	2	2	4
UTAH		1	1		2	2	2	4
VERMONT								
VIRGIN ISLAND								
VIRGINIA, E		1	1		2	2	2	4

30-Apr-85 FY 1985 SUPPLEMENTAL JUDGESHIPS/ASSISTANT U.S. ATTORNEYS INITIAL ALLOCATIONS

DISTRICTS	CIRCUIT JUDGES	DISTRICT JUDGES	TOTAL JUDGES	APPELLATE ATTORNEYS	TRIAL ATTORNEYS	TOTAL ATTORNEYS	TOTAL SUPPORT	TOTAL
VIRGINIA, W								
WASHINGTON, E		1	1		2	2	2	4
WASHINGTON, W		2	2		4	4	4	8
WEST VIRGINIA, N								
WEST VIRGINIA, S								
WISCONSIN, E								
WISCONSIN, W								
WYOMING		1	1		2	2	2	4
GUAM								
SUBTOTAL	24	61	85	16	122	138	138	276
UNDISTRIBUTED					61	61	61	122
TOTAL	24	61	85	16	183	199	199	398

QUESTION:

What new initiatives against drug trafficking, nationally and at the major ports on entry such as New York, will be made possible by the proposed FY 1986 budget for the Department of Justice?

ANSWER:

Obviously, the principal focus of the Department's 1986 budget is to continue the high-priority enforcement programs previously endorsed by the President. No specific, geographic-based initiatives are envisioned within our proposed request.

It is important to emphasize that drug trafficking patterns change regularly and there is no way to predict where a major infusion of new resources may be required. Our enforcement capability must be sufficiently flexible to respond to these changing patterns.

As the National Drug Enforcement Policy Board becomes operational, it is conceivable that further enforcement initiatives will be identified to complement the work being done by our Organized Crime Drug Enforcement Task Forces.

Assets Forfeiture Fund

QUESTION:

Given the limitations the budget deficit inevitably places on us, I would like to suggest that we look for additional sources of financing for law enforcement, such as the forfeitures of the assets of bank accounts of drug dealers.

Would you be open to the idea that those agencies, such as the DEA and the U.S. Attorneys offices, should share to a greater extent in the benefits of those forfeitures?

ANSWER:

The original intent of the legislation which established the Department of Justice Assets Forfeiture Fund was to provide the financial capability to manage seized and forfeited property without diverting funds from other enforcement priorities. This would allow proceeds from forfeitures to be used to pay for the necessary costs involved in these activities. The Comprehensive Crime Control Act of 1984 also provided the Department with authority to use proceeds of forfeiture to pay awards, purchase evidence and to retrofit seized conveyances placed into service. These discretionary expenditures are similar to those for which the Department routinely seeks appropriated funds. Therefore, these expenditures will be made from proceeds of forfeitures subject to a dollar ceiling. Once it is determined that the Assets Forfeiture Fund is generating adequate income to meet management and other mandatory expenses, the organizations involved in narcotics enforcement can benefit from the additional funds to pay awards, purchase evidence, and retrofit seized conveyances. At this time we do not believe it is necessary to expand on the types of activities which may be financed from proceeds placed in the Assets Forfeiture Fund.

QUESTION:

Could you briefly summarize the Department of Justice's plans to use our criminal and civil forfeiture laws in drug trafficking cases? Have you worked out with OMB the details of how withdrawals are to be made from the Fund? Will withdrawals be made for each forfeiture-related expense, or only for net expenses of each account?

ANSWER:

We expect that the newly expanded criminal forfeiture provisions of the Comprehensive Crime Control Act of 1984 will prove to be a very effective tool in the drug trafficking war. We will now be able to seize any assets belonging to drug traffickers if the asset has been gained trhough criminal activities when in the past we were only able to seize assets actually being used in criminal activities.

We have worked out the details for using the Fund with OMB and expect that gross receipts will be deposited in the Fund. It follows that all forfeiture-related expenses would be paid by withdrawals from the Fund. It should be noted that only rewards, awards, purchase of evidence and payments for information and retrofitting expenses will be applied against the dollar limitation.

Comprehensive Crime Control Act

QUESTION:

What has been the Department's experience to date with the Comprehensive Crime Control Act? To what extent has the Department utilized the pretrial detention provisions, for example? What additional demands for personnel has the new law created?

ANSWER:

Although the potential of the Comprehensive Crime Control Act (CCCA) is probably greater than almost any piece of recent criminal justice legislation, the full impact of the Act is yet to be experienced, because the Department has only six month's experience uder it. Additionally, some of the provisions of the Act (such as the sentencing provisions) are being phased in over a period of years. The Department expects the Act to be a tremendous help in some areas, such as the forfeiture of assets and the sentencing provisions, because of the results seen in a number of states that have such laws and because of the deterrent effect of the provisions.

Concerning specific examples of activity under CCCA, the Office of Justice Programs (OJP) has published guidleines for use of the Crime Victims Fund and anticipates making the first awards this summer. From the Act's signing in October through February of this year, $27,653,496 has been collected for the Fund. The OJP anticipates the $100 million will be collected and disbursed in FY 1986.

The effects for the pre-trial detainee provisions of the Comprehensive Crime Control Act have become evident as the U.S. Marshals Service handles prisoners folowing the guidelines of the bail reform. Statistics gathered through February 1985 show an 11.1 percent increase in the total number of prisoners committed to the Marshals Serice as a result of the new detention hearings, detention appeals, and bond revocations. Annualized for a full-year period, the detention proceedings should cause an additional 32,000 prisoner productions. In addition, deputy marshals provided protection at 1,597 separate detention proceedings in January 1985 and 1,590 in February; this represents a new responsibility.

Major workload increases of the U.S. Attorneys have been experienced in the pre-trial detention and criminal collections areas and in areas of increased Federal jurisdiction. Each pre-trial detention hearing requires about one full day of assistant U.S. Attorney preparation and court time. In the criminal fine collections area, the U.S. Attorneys anticipate some 40,000 assessments, of which at least ten percent will require debt management by U.S. Attorney personnel. In the area of expanded Federal jurisdiction, there are 47 new or modified offenses under the Comprehensive Crime Control Act of which seven will result in a substantial number of increased cases. The U.S. Attorneys estimate an increase of 2,000 criminal cases due to this expansion. An increase of 162 positions (36 attorneys and 126 support personnel) and $1,800,000 are requested to meet these workload demands.

QUESTION:

Have you done any analysis of the extent to which longer prison sentences are being given in drug trafficking cases? What effect on prison crowding do you expect from the Comprehensive Crime Control Act's increased penalties for drug trafficking and other crimes?

ANSWER:

Although we have not conducted an indepth analysis of prison sentences involving drug trafficking cases, the average sentence imposed on drug traffickers has risen from 54.5 months in 1980 to 65.7 months in 1984.

We believe the Comprehensive Crime Act of 1984 will increase the inmate population. The addition of several new Federal offenses in the areas of drug trafficking, violent crime, terrorism, and computer fraud will all contribute to this increase. In addition, the elimination of parole and the directions to the Sentencing Commission to assure that terms of imprisonment are at or near the maximum for crimes of violence and most drug violations, will further increase the inmate population.

At the same time, it should be noted that the legislation also states, "The sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission."

QUESTION:

To what extent are the new provisions of the Comprehensive Crime Control Act making it easier for our U.S. Attorneys to obtain cooperation and information from criminals?

ANSWER:

As you know, there are provisions in the Act which provide that informants can be paid rewards of up to $150,000 or 25 percent of the criminal assets forfeited (whichever is lower) and I believe this will make it easier for us to obtain cooperation and information. However, the Assets Forfeiture Fund which will pay informants has not yet been appropriated, and we cannot make such payments until it is.

Calendar System of Federal Courts

QUESTION:

What do you see as the advantage, in terms of efficiency in the criminal justice system, of the individual calendar system used in Federal courts?

ANSWER:

The U.S. Attorneys find the individual calendar system to be much more efficient. Under the old system, different judges heard various aspects of the trial procedure. That system caused many judges to become acquainted with each case. The increased preparation time required by each judge increased the time necessary for each case to be tried.

Additional Resources for Financial Investigations

QUESTION:

How many additional resources and personnel do you intend to dedicate to financial investigations of criminal groups, particularly drug trafficking organizations? I am especially interested in your plans to place increased emphasis on money laundering and criminal and civil forfeitures.

ANSWER:

For the Criminal Division, no additional staff have been requested to conduct financial investigations. However, through, internal reallocation, the Criminal Division expects to increase the approximate number of attorney workyears assigned to financial investigations from three workyears in 1985 to four in 1986. With regard to forfeitures, the Criminal Division has requested an increase of one attorney position and one clerical position in its 1985 supplemental request occasioned by the Comprehensive Crime Control Act. These additional positions will be responsible for developing guidelines for sharing seized assets with state and local law enforcement authorities, for establishing procedures to implement the sharing of seized assets and to monitor compliance with the policies and procedures that are established.

For the U.S. Attorneys, the 1985 supplemental request includes 235 attorney positions of which 161 are for criminal litigation and 74 are for civil. A significant portion of these criminal attorneys will be devoted to organized crime and narcotics and dangerous drug cases. Therefore, this increase will permit the U.S. Attorneys' offices to place additional resources in the areas of money laundering and criminal forfeitures of drug trafficking organizations. It is also the intent of the U.S. Attorneys to place the 74 attorneys requested for civil litigation in areas which will allow an increase in civil forfeiture activities resulting from increased drug enforcement.

The FBI conducts financial investigations of criminal groups in each of its criminal investigative programs. The FBI's Resource Management Information System, which tracks the expenditure of investigative resources, has not been designed in a manner which will permit an estimate to be made of total resources being deveoted to the "financial investigation" of all criminal groups. As a result, a specific gross amount of resources dedicated to these investigations in FY 1984 cannot be provided.

The FBI is directing an intensive investigative effort toward the narcotics smuggling activities of the Sicilian faction of La Cosa Nostra (LCN). Money laundering activities associated with this LCN activity are controlled by a select group of individuals who conduct their activities throughout the world. Individuals in the United States, Switzerland, and Italy have been identified as handling the majority of funds-which amount to hundreds of millions of dollars. These funds are being laundered by the Sicilian faction of LCN in connection with their narcotics activities. This investigative effort is being coordinated closely with the Drug Enforcement Administration as part of the Organized Crime Drug Enforcement Task Force Program.

The volume of forfeiture activity has become so high, especially in large offices such as Miami, Los Angeles, New York, and San Francisco, that two or three employees at times need to be dedicated to forfeiture efforts.

In DEA work plans from field offices are under continuous review to insure that emphasis is being placed on the identification of trafficker assets and the full use of both civil and criminal statutes to implement their seizure and forfeitures. Several DEA divisions have established "asset seizure teams" to review all investigative cases to insure the seizure of all significant assets. The use of undercover money laundering investigations to launder traffickers' funds and then invest them in domestice assets for subsequent seizures is also being accomplished in several DEA divisional offices.

DEA is currently working with the American Bankers Association, IRS, U.S. Customs, the FBI and various bank regulatory agencies to produce a national teleconference on drug money laundering. The teleconference will be viewed simultaneously in 65 cities by members of the financial and law enforcement communities and will focus on the role of financial institutions in the laundering of illicit drug money. In addition to the pre-taped presentations which will be made in Washington, a live question and answer session will also be held in each location. This program, which will be presented in either late June or September, should contribute significantly to a better understanding of the different yet interfacing roles of the various enforcement and regulatory agencies in the area of money laundering and provide a forum for improved liaison to occur between law enforcement and the banking community.

Considerable attention and review is currently being given to various undercover money laundering investigations which have been, or are being conducted by various DEA divisions. Public Law 98-411, signed by the President on August 30, 1985, exempts DEA from certain statutory restrictions that previously have limited various undercover operations. The review of these types of undercover investigations concern their overall productivity in relation to their costs and their potential for seizure of traffickers assets and the acquisition of new intelligence.

Intelligence received from various undercover operations indicates that some trafficking groups, especially the Colombians, are very concerned about moving their assets outside the United States and beyond the scrutiny of U.S. authorities. To deal effectively with the problem of traffickers' assets being secreted outside the United States, DEA is working closely with the Office of International Affairs of the Department's Criminal Division in the pursuit of Mutual Assistance Treaties. These treaties enable the seizure of illicit drug proceeds secreted in foreign countries and the acquisition of valuable financial records for use in domestic prosecutions. Such treaties are currently in effect with Switzerland, the Netherlands and Italy. A modified version of the Mutual Assistance Treaty negotiated with Great Britain permits access by U.S. prosecutors to financial records from the Cayman Islands, while new agreements are being currently negotiated with Canada, Panama, the Bahamas and Thailand.

In order to insure that no country becomes a haven for illegal drug money, the Financial and Special Intelligence Section of Headquarters (OIF) is working with DEA country offices in various parts of the world to encourage the enactment of asset seizure and forfeiture legislation in all nations. Such legislation, coupled with treaties of mutual assistance will assist DEA in its goal to make it prohibitively expensive to those who would traffic in illicit drugs.

Northeast Federal Prison

QUESTION:

What is the status of the Department's efforts to find a location for a new Federal prison in the Northeast? Have you contacted any officials in New York about their possible interest in such a project?

ANSWER:

At this time, the Bureau of Prisons has only two possible sites in the State of New York. The first site is in the Town of Malone in upper New York State. The Bureau was contacted by local officials who expressed their interest in the possibility of locating a Federal Correctional Institution there. Consequently, we received a communication from Congressman David O'B. Martin indicating his support for an evaluation of potential sites in this community. The site is problemmatic because of its geographic isolation and the additional fact that we currently have a correctional institution located in that portion of New York State. The only other site in New York where we have expressed a direct interest is the former Stewart Air Force Base near Newburgh, New York. About six months ago, we began to investigate the possibility of locating a correctional facility on a portion of the former base property. At that time, political opposition to our interest was evident.

There are several other sites outside of New York in the northeast which we are actively considering, including Fort Dix and Fairfield Township, New Jersey. In addition, other sites in the State of Pennsylvania have been evaluated but are not under active consideration at this time.

In summary, identification of sites for new Federal correctional facilities in the northeast has been difficult. Several other highly promising sites have had to be abandoned because of strong political opposition.

Reimbursements to States for Marielitos

QUESTION:

When will the Department be able to issue checks to states to reimburse them for the cost of incarcerating Marielitos convicted of felonies? What is the status of New York State's application for reimbursement?

ANSWER:

The awards have been mailed to the States with a completed request for reimbursement form. The checks will be mailed within one week of receipt of the signed award acceptance and the request for reimbursement by the Office of Justice Programs.

Mariel Cuban Program - Allocations

State	Number of Inmates Original Request	Number of Inmates Verified by INS	Inmate Months	Award Amount
Alaska	3	2	24	$6,643
California	21	19	155	42,903
Florida	706	679	7,270	2,012,290
Georgia	21	20	215	59,511
Illinois	93	74	644	178.255
Michigan	22	22	240	66,430
Minnesota	17	16	160	44,287
Nevada	48	45	457	126,495
New Jersey	163	161	1,816	502,657
New York	363	287	3,272	905,669
Ohio	6	6	71	19,652
Pennsylvania	59	58	446	123,450
Rhode Island	13	11	100	27,679
Texas	216	199	1,925	532,828
Washington	28	28	322	89,127
Wisconsin	95	94	947	262,124
Total	1,874	1,721	18,064	5,000,000

Grants were awarded on April 1, 1985.

State allocation formula: $5 million (total available) divided by 18,064 (total number of months) = $276.79362 per inmate month times the number of inmate months for respective state.

Actual average cost per inmate:	$2,905
Average number of months per inmate:	10.5 months
Average annualized cost per inmate ($277 x 12 mo.):	$3,324

New York has received its award of $905,669 along with a completed request for reimbursement form. The check will be mailed within one week of receipt of the signed award acceptance and the request for reimbursement by the Office of Justice Programs.

ADDITIONAL COMMITTEE QUESTIONS

ATTORNEY GENERAL

Organized Crime Drug Enforcement Activities

QUESTION:

The Committee understands that the President will soon recommend the continuation of the President's Commission on Organized Crime.

If the above is true, how long will the Commission stay in existence?

ANSWER:

By Executive Order 12507, signed March 22, 1985, the President's Commission on Organized Crime was extended until April 1, 1986, thirty days after the release of was final report. The Department is presently developing estimates for a 1986 budget amendment which will allow the Commission to complete its mission by the specified date.

QUESTION:

Please provide a detailed budget justification for the Commission's activities in FY 1986.

ANSWER:

In FY 1986 the Commission plans to issue two additional interim reports on the subjects of electronic surveillance and responses of state and local law enforcement to organized crime. Extensive staff work and statistical surveys have already been completed on these projects. The Commissioner also plans to provide for public record a complete report of the various hearings it has held in 1985. Finally, resources will be required for the writing and printing of the Commission's final report. In order to meet these requirements the Commission plans to operate at its present level through April 1, 1986.

QUESTION:

Please describe the activities of the OCDE Governors' Project within your General Administration account? What is the budget of the Governors' Project? What is the budget for the OCDE annual report?

ANSWER:

The Governors' Project, or the Fifty-State Project, is an effort to enlist the aid of the Nation's governors in achieving the overall goal of reforming state and local criminal justice systems. The resources requested in the General Administration appropriation are for communication and travel expenses related to this effort.

The budget of the Governor's Project is $100,000.

The budget for the OCDE Annual Report is $100,000.

Electronic Surveillance Cases

QUESTION:

Your justification states that both the Office of Intelligence Policy and Review and the Office of Enforcement Operations in the Criminal Division have jurisdiction over electronic surveillance cases. Please describe how these offices interact on specific requests.

ANSWER:

There is no interaction between these offices. The Office of Intelligence Policy and Review (OIPR) is responsible for approving electronic surveillance that is proposed for the purpose of gathering information relative to national security. The Office of Enforcement Operations (OEO) reviews proposals for electronic surveillance that are intended to assist in criminal investigations. OEO has never referred a proposal submitted to it to OIPR. Neither has OIPR ever referred a proposal submitted to it directly to OEO. While it is possible that a proposal rejected by OIPR has been submitted subsequently to OEO on the basis of a criminal investigation, the Criminal Division is not aware of any such instance. In any event, there has never been any direct exchange of information or communication between these two offices.

DOJ Law Library

QUESTION:

The following questions relate to the Justice Department's Law Library System:

What is the size of the current Justice Department Law Library collection?

ANSWER:

To carry out its assigned mission of providing library and related information services to personnel of the Department of Justice, the Law Library System has approximately 341,000 bound volumes and over one million pieces of microform (microfiche and reels of microfilm).

QUESTION:

Where is the collection located, i.e., how many volumes are in the Main Library, in each of the satellite libraries and in each of the offsite facilities? In the Metropolitan Washington area?

ANSWER:

Main Library--200,000 bound volumes including 5,000 volumes in storage.
Antitrust Library--Main 18,000 volumes, Star 12,000 volumes, Safeway 4,000 volumes.
Civil Library--Main 20,000 volumes, Todd 22,000 volumes
Civil Rights Library--Main 8,350 volumes, HOLC 3,600 volumes
Criminal Library--Main 7,000 volumes, FTRI 7,100 volumes
Lands Library--16,500 volumes

Tax Library--Main 11,600 volumes, Star 8,400 volumes
Relocation Library--2,500 volumes

Note: Main Star, Safeway, Todd, HOLC and FTRI are various buildings in which the satellite libraries are located. All are in the Washington, D.C. area.

QUESTION:

How large are the various library facilities; what is the square footage, seating availability, accessibility of documents?

ANSWER:

Main Library--30,000 sq. feet, offsite storage 5,000 sq. feet
Antitrust Library--Main 2,200 sq. feet, Star 1,400 sq. feet, Safeway 600 sq. feet
Civil Library--Main 2,250 sq. feet, Todd 2,900 sq. feet
Civil Rights Library--Main 820 sq. feet, HOLC 1,300 sq. feet
Criminal Library--Main 2,100 sq. feet, FTRI 2,050 sq. feet
Lands Library--2,300 sq. feet
Tax Library--Main 4,966 sq. feet, Star 2,296 sq. feet

Seating is as follows:

Main Library--150 patrons
Antitrust Library--Main 21 patrons, Star 17 patrons, Safeway 6 patrons
Civil Library--Main 17 patrons, Todd 36 patrons
Civil Rights Library--Main 15 patrons, HOLC 21 patrons
Criminal Library--Main 10 patrons, FTRI 24 patrons
Lands Library--16 patrons
Tax Library--Main 30 patrons, Star 34 patrons

Materials are as accessible as a multiple facility will allow, in that virtually the entire collection is on open shelves. Some documents in remote storage must be retrieved for patrons.

QUESTION:

What is the library's operating budget and breakdown? (i.e., amounts for acquisitions, personnel, overhead, etc.)

ANSWER:

The Library's operating plans for FY 1985 follows:

Personnel & related expenses....	$1,389,000
Rentals & communications........	89,000
Contractual services............	633,000
Publications (aquisitions)......	757,000
Publications (reimbursable).....	3,591,000
Equipment.......................	184,000
Total........................	6,643,000

QUESTION:

What portion of the acquisitions budget is for the Main Justice Department Library and its local branches?

ANSWER:

FY 1985 publications budget broken down as follows by library:

Main................	$312,000
Antitrust...........	115,000
Civil...............	85,000
Civil...............	60,000
Criminal............	60,000
Lands...............	45,000
Tax.................	75,000
Relocation..........	5,000
Total.............	$757,000

QUESTION:

Do these budget figures include the expenses of all the satellite libraries?

ANSWER:

These figures include the expenses of all the libraries, including satellites.

QUESTION:

At what rate is the Library's collection growing?

ANSWER:

The collection is growing at five percent per year.

QUESTION:

What are growth projections, as well as projected facilities and staff needs in the foreseeable future? Five years? Ten years?

ANSWER:

Additional space and equipment needs are anticipated; we are trying to stay at our present workyear ceiling. Requirements may change as Department organizations are relocated.

QUESTION:

Do you have any estimates for costs associated with meeting these needs?

ANSWER:

Not at this time; this year our acquisitions costs are running 15% over last year's.

QUESTION:

What additional services would you hope to provide in the future?

ANSWER:

Additional activities could include selective dissemination of information to attorneys in the D.C. area and in the field, searching more data bases in less time, supporting the implementation of the collection development plan, producing specialized bibliograhies on request or in anticipation of such, broadening of document delivery, increasing services to the field, doing more legislative histories and the on-demand publishing of them, developing an online information and referral system with information about DOJ for the use of both librarians and patrons, and developing and adapting the use of in-house acquisitions and serials data bases for reference needs.

QUESTION:

Do you have sufficient shelf space to house your library adequately at the present time?

ANSWER:

We have adequate shelf space at the present time, but have inadequate staffing space. Additional space for offsite storage and compact shelving have been acquired, which has eased the immediate crunch. A massive weeding project in the Main Library was undertaken and completed this year. The Library System has an active microform conversion program.

QUESTION:

Do you have sufficient space to house your library in five years? In ten years?

ANSWER:

Not in the actual library facilities themselves.

QUESTION:

If not, what alternatives are you examining to provide adequate space?

A high priority will have to be given to additional microform conversion, video disk, online retrieval, weeding, careful selection with fewer copies of materials and less duplication if additional space is not available.

Land Acquisition Cases

QUESTION:

In your justification for the Land Acquisition Activity within the Land and Natural Resources Division you state that the Division reviews all requests for condemnation proceedings. The Division determines whether each case should be handled by a U.S. Attorney, by the Division or jointly. Please describe the criteria you use in making that decision.

ANSWER:

The criteria for determining the responsibility for handling condemnation cases are set forth in Sections 5-4.321, 5-4.322, and 5-1.325 of the United States Attorneys Manual. These criteria may be summarized as follows. United States Attorneys are assigned full responsibility in cases in which there are no actual or anticipated policy questions, no peculiar appraisal problems, no novel legal questions, and claimed compensation does not exceed $100,000. United States Attorneys offices and the Department of Justice are assigned joint responsibility in cases in which there are actual or anticipated policy questions, peculiar appraisal problems, novel legal questions, or claimed compensation in excess of $100,000. Depending upon the national interests, participation by the Division in joint responsibility cases may range from mere counsel and advice to total management. In order to identify cases in which the Division should be assigned responsibility, all new cases in which the claimed compensation is in excess of $300,000 are reviewed closely and appropriate assignments made based upon the actual amount of money at risk, the complexity of the case, the experience of the Assistant United States Attorney, and the workload of the United States Attorney's office.

The costs of litigation and the proximity of the United States Attorney to the court result in a large percentage of cases being assigned to the United States Attorneys. However, the nature of the issue of law involved, the relative national or financial importance of the case, the precedential possibilities of the litigation, and the need for the Division to retain a cadre of staff attorneys trained in the trial of cases, are all considered in making case assignments.

Victim/Witness and LECC Program

QUESTION:

Last year, Congress allowed the Department to establish a Victim/Witness and Law Enforcement Coordinating Committee program coordinator position in half of the judicial districts. What is the status of that program? Which districts received the position? Do you intend to expand the program in the near future?

ANSWER:

In 1984, Congress authorized 47 Victim-Witness/Law Enforcement Coordinating Committee (LECC) Coordinators. These positions were allocated among the 94 Federal districts on the basis of both qualitative and quantitative factors, including overall need, the United States Attorneys' commitment to the LECC program, and the level of LECC and Victim/Witness activity. A list of the districts receiving coordinators follows. Notification letters and position descriptions have been sent to all these districts. The actual hiring of coordinators has begun, and it is expected the process will be completed by midsummer. The Executive Office for United States Attorneys is in the process of completing a comprehensive manual to guide and direct the coordinators in their new duties. A training seminar is planned once all the coordinators are on board.

It is anticipated that LECC activity will increase as the new positions are filled. LECC seminar and training programs are growing in popularity and the Speakers Bureau listing continues to expand.

Districts Receiving LECC/Victim-Witness Position Allocations
March 1985

Alabama, Northern
Alaska
Arizona
Arkansas, Eastern
  (shared with Western)
California, Central
California, Eastern
California, Northern
California, Southern
Colorado
Florida, Northern
Florida, Southern
Georgia, Middle
Hawaii
Idaho
Illinois, Northern
Illinois, Southern
Kansas
Kentucky, Western
  (shared with Eastern)
Louisiana, Eastern
Maine
Maryland
Massachusetts
Michigan, Western
Minnesota
Mississippi, Southern
Missouri, Eastern
Nevada
New Jersey
New York, Northern
New York, Western
North Carolina, Middle
Ohio, Southern
Oklahoma, Western
Pennsylvania, Eastern
South Carolina
South Dakota
  (shared with North Dakota)
Tennessee, Eastern
Tennessee, Middle
Tennessee, Western
Texas, Southern
Texas, Western
Utah
Virginia, Eastern
Washington, Eastern
West Virginia, Northern
Wisconsin, Eastern
Wyoming

United States Marshals Service

Special Operations Group

QUESTION:

What is the cost of the Marshals Service Special Operations Group (SOG) in FY 1985? What are your projected costs for FY 1986? How does the mission of the SOG differ from that of the FBI's Hostage Rescue Team?

ANSWER:

The cost of the Marshals Service Special Operations Group (SOG) in FY 1985 is $623,500. This figure includes the Marshals Service Special Operations Group Training Center (SOGTC) at Camp Beauregard, Louisiana. The projected cost for FY 1986 is $650,000.

The Marshals Service SOG differs substantially from the Federal Bureau of Investigation (FBI) Hostage Rescue Team (HRT). While both the SOG and the HRT were established to respond to law enforcement emergencies, the SOG is designed to deal with a broad range of U.S. Marshal responsibilites within this context. Under appropriate circumstances, the SOG: (1) responds to civil disturbances, (2) protects federal property, (3) enforces orders of the U.S. Courts, and (4) provides law enforcement and security assistance to any other agency the Attorney General may designate.

Fugitive Investigations Strike Team

QUESTION:

According to your justification for the Marshals Service, the FIST program has amassed 7,446 arrests; 823 on Federal warrants, and 6,619 on warrants from other jurisdictions. What criteria do you use in accepting warrants from other jurisdictions for inclusion in a FIST operation?

ANSWER:

According to the most current statistics, the FIST program has amassed 7,448 arrests including 823 on Federal warrants and 6,625 for other jurisdictions.

The Marshals Service accepts warrants from state and local jurisdictions where the responsible police departments participate in FIST operations. These warrants must have been issued for fugitives who have underlying original felony charges against them. Most of the individuals sought during FIST operations have extensive histories of violent or drug-related crimes.

Investigative Automated Data Bank

QUESTION:

What is the cost, in FY 1985, of the Marshals Service investigative automated data bank? What are the costs of operation of the data bank in FY 1986?

ANSWER:

The Warrant Information Network, a fugitive case tracking system, will cost the Marshals Service $310,000 in FY 1985 and $450,000 in FY 1986.

USMS Training

QUESTION:

How does the training provided at the Marshals Service Training Center at Camp Beauregard differ from that provided at the Federal Law Enforcement Training Center (FLETC)?

ANSWER:

The training provided at FLETC is fashioned more to the basic trainee coming into the Marshals Service. Although the training is comprehensive, emphasis is placed on classroom instruction. Training conducted at the Marshals Service Special Operations Group Training Center at Camp Beauregard deals with advanced, hands-on, practical exercise type training. Emphasis is on operational planning and violent encounters under stressful conditions. The facilities at Camp Beauregard are more conducive to this type of training with few of the restrictions that would be encountered at FLETC.

Support of United States Prisoners

QUESTION:

According to your justification for the "Support of United States Prisoners" account, "reexamination of recent trends in jail day rates will permit the Department to [use $3,683,000 for other purposes]." Please describe that reexamination. What were your projected jail day rates when the FY 1985 bill was enacted?

What are projected jail day rates now?

What are your projections for FY 1986?

ANSWER:

Based upon a re-examination of prisoner load trends and associated detention costs in contract jails, the Marshals Service was able to change its projected jail day rate for FY 1985 from $47.05 to $36.00. The FY 1986 jail day rate is now projected to be $38.50. Each month, the 94 USMS district offices submit reports on the number of USMS prisoners housed in state and local jails, the jail days used, and associated prisoner housing costs. As actual prisoner housing costs data are received, the Service is able to review and re-examine rate and jail day costs trends to update budgetary projections. The rate of increase for the jail day rate has slowed considerably due to a decline in the rate of inflation nationwide; the conversion from three-year contracts to non-expiring Intergovernmental Service Agreements (IGA's); as well as the benefits from the implementation of the Federal Excess Property (FEP) and Cooperative Agreement (CAP) Programs.

After experiencing a high rate of growth from 1980-83 (ranging from 11-26 percent), the average rate increased only eight percent from 1983-84. This modified level of growth was used to revise the FY 1985 and 1986 jail day rate projections.

INS Activities

QUESTION:

Please provide the Committee with the budget request for the Immigration and Naturalization Service for FY 1986 as submitted to the Department, and as submitted to OMB.

ANSWER:

The attached chart provides the requested information.

PROGRAM	SPRING PLANNING BUDGET				OMB BUDGET	
	Request to Department		Submitted to OMB		Submitted to Congress	
	Pos.	BA	Pos.	BA	Pos.	BA
ENFORCEMENT:						
Inspections	1,454	$76,180	1,531	$79,766	1,531	$72,917
Border Patrol	3,715	164,354	3,706	163,411	3,706	160,529
Investigations	1,225	56,732	1,115	51,239	1,021	42,579
Anti-Smuggling	388	18,771	387	18,468	331	15,030
Detention & Deportation	1,370	101,691	1,310	90,343	1,151	77,711
Subtotal	8,152	417,728	8,049	403,227	7,740	368,766
CITIZENSHIP & BENEFITS:						
Adjud. & Natz.	1,346	49,429	1,295	47,068	1,240	44,974
Regugees & Overseas	64	7,797	66	6,630	66	6,554
Subtotal	1,410	57,226	1,361	53,698	1,306	51,528
IMMIGRATION SUPPORT:						
Training	61	6,576	59	7,510	59	6,526
Data & Communications	174	64,018	191	62,358	191	49,736
Info. & Records Mgt.	1,197	38,278	1,161	37,037	1,161	36,162
Intelligence	44	2,406	43	1,961	30	1,507
Research & Development	3	1,042	3	741	2	532
Construct. & Engineering	25	25,479	22	17,020	17	6,072
Field Mgt. & Support	305	14,150	301	13,954	301	13,712
Legal Proceedings	322	13,558	383	15,712	222	10,894
Subtotal	2,131	165,507	2,163	156,293	1,983	125,141
PROGRAM DIRECTION:						
Exec. Dir. & Control	196	10,308	169	8,822	169	8,297
Adminstrative Services	417	29,275	401	26,402	401	23,778
Subtotal	613	39,583	570	35,224	570	32,075
TOTAL	12,306	680,044	12,143	648,442	11,599	577,510

QUESTION:

According to your justification, 39 percent of Border Patrol officer time is devoted to line-watch activities. What activities comprise the remainder of the time?

ANSWER:

The following is a breakdown of the activities and the officer hours as a percentage of their total time.

Activity	Percentage
Linewatch	39.5%
Patrol	3.1
Farm and ranch check	2.6
Traffic check	14.6
Transportation check	4.1
City Patrol	4.3
Air Operations	2.0
Liaison/Informant Development	2.1
Intelligence	1.0
Total	73.3

The remaining 26 percent of officer hours is taken up by such activities as alien processing, litigation, training, administrative duties, etc.

QUESTION:

INS maintains a full-time staff in the Atlanta Penitentiary because of the Cuban criminals detained there. What is the cost of that activity? What other costs does the INS cover at the Atlanta Penitentiary (i.e., inmate costs)?

ANSWER:

The salaries and benefits of the 13 INS employees permanently assigned to the Atlanta USP are estimated at $350,000. In addition, the Detention and Deportation program funds the transportation costs for Cubans (accompanied by INS escorts, as necessary) who are sent to Atlanta after a revocation of parole. Currently, additional INS employees are being detailed to Atlanta to handle case processing for the Cuban Repatriation Program, and the costs for these details are also being borne by INS. Inmate costs for such items as food, clothing, education and recreation are provided by the Bureau of Prisons.

QUESTION:

Why did the INS create its Special Assistant U.S. Attorney Program? Have immigration cases not received adequate attention from U.S. Attorney offices in the past? What types of cases do the INS Special Assistant U.S. Attorneys handle? Do any other agencies have similar Special Assistant U.S. Attorney programs?

ANSWER:

The INS Special Assistant U.S. Attorney (SAUSA) program was created in New York many years ago because of a significant volume of highly specialized INS-related casework. Much of this work related to clearly deportable aliens who had exhausted all administrative avenues of appeal, and were then seeking relief through the courts. U.S. Attorneys found it difficult to support these cases because of the volume and the requirement to develop expertise in immigration law -- particularly a problem because Assistant U.S. Attorneys have traditionally rotated assignments. The SAUSA program has been received favorably by the courts. The specialized expertise of INS attorneys helps expedite court proceedings.

While immigration cases have not always received the amount of attention INS might like, we recognize that U.S. Attorney resources are limited and given these constraints, we believe adequate attention has been afforded. Indeed, a major by-product of the SAUSA program is the increased litigative attention immigration matters receive.

In reponse to increasingly serious problems of illegal immigration, the SAUSA program has been expanded in recent years, and now includes between 15 to 20 INS SAUSA's located in a number of judicial districts. In addition, the Office of Immigration Litigation was created in the Civil Division to further enhance effective litigation in the district courts. The Office has undertaken the defense of significant cases in districts where the prior volume of cases did not lead to the creation of immigration expertise within the U.S. Attorneys' offices.

Duties of SAUSA positions also have expanded and now may include criminal violations of immigration law as well as habeas corpus petitions, forfeitures, fines and other civil proceedings.

Virtually every major department of government as well as many governmental agencies have SAUSA's; this is particularly true of the Armed Services. In summary, the SAUSA program is beneficial to both U.S. Attorneys and those agencies from which their ranks are drawn.

Otay Mesa Border Patrol Station

QUESTION:

The following questions relate to the Otay Mesa, California border station.

When was the decision to build the Otay Mesa facility made?

Who made that decision?

What was the justification for the Otay Mesa facility?

How much did the INS contribute to the construction of the Otay Mesa facility?

How many INS employees are currently assigned there?

How many vehicles used Otay Mesa last month?

Has there been any decrease in the number of vehicles using other ports of entry since Otay Mesa opened? If so, where and by how much?

ANSWER:

The final decision to construct the inspection facility at Otay Mesa, California was made in the latter part of 1978, after some fifteen years of discussion and planning.

On the Mexican border international bridges and border crossing stations were constructed after joint agreement between (and signing of a permit by) the Presidents of the United States and Mexico. Such agreements are negotiated by non-inspections agencies, e.g., the General Services Administration (GSA), the International Boundary Commission, and the Department of State.

The number of persons entering the United States through the San Ysidro facility grew to 30 million in FY 1984. Obviously, the existing facility was no longer adequate to handle such volume, and relief was needed; i.e., the Otay Mesa port of entry.

Inspection agencies do not pay for facilities construction at ports-of-entry. Any necessary renovation or new construction is provided to the inspection agencies involved by GSA at no expense.

INS has an authorized force of 34 at Otay Mesa. Twenty-eight inspectors are on board and the six vacancies are in the process of being filled.

During April, 1985, the following number of vehicles and persons entered at the Otay Mesa port of entry:

Automobiles	150,000
Buses	185
Trucks	12,772
People	462,000

Since San Ysidro is the only other port of entry in the vicinity, all traffic currently crossing at Otay Mesa would, were it not for the new port, be crossing there.

Immigration and Naturalization Service

QUESTION:

What is the status of your border consolidation program?

ANSWER:

The Service supports the consolidation compromise outlined in the plan approved November 2, 1983 by the Cabinet Council on Management and Administration, and by the President on January 5, 1984. The plan has not undergone revision in the intervening months.

Since reorganization authority has not been forthcoming from the Congress, no vehicle is available to move the consolidation plan forward.

QUESTION:

What is the starting GS level for INS inspectors and members of the border patrol? What other law enforcement agencies start their officers at this level? Hasn't this low starting salary hurt morale and caused higher attrition rates than is ideal? What would it take, legislatively or administratively, to upgrade starting inspector and border patrol salaries to GS-7? How much would it cost for FY 1986?

ANSWER:

INS immigration inspectors and Border Patrol officers both start at the GS-5 grade level. This grade -- or a comparable salary level in state and municipal agencies -- is not uncommon for entry level positions in law enforcement. Classification of these positions, and establishment of qualification standards, is the responsibilty of the agency and the Office of Personnel Management. Therefore, changes may be handled administratively.

The following are some of the law enforcement agencies that start their officers at the GS-5 level:

- U.S. Customs Service
- U.S. Marshals Service
- U.S. Secret Service
- Alcohol, Tobacco & Firearms

With the addition of 850 new positions in 1985 associated with the border enforcement initiative, the Border Patrol is currently engaged in the largest hiring program in its history. To date, INS has had no problem recruiting a sufficient number of qualified applicants. Historically, however, INS has had some difficulties retaining agents in high expense areas such as Chula Vista, CA and hardship areas such as Presidio, Texas. A higher base salary may make it easier to retain agents in these locations. With regard to the Inspections program, it should be noted that the base of a typical GS 5 inspector salary is augmented, on average, by $7,500 for 1931 Act Overtime.

To upgrade starting Border Patrol salaries administratively, the qualifying general and specialized experience standards set by the Office of Personnel Management for the current GS-7 grade level would be used in evaluating and selecting applicants for the Border Patrol. If the current specialized experience standard for the GS-7 level were too restrictive in terms of maintaining a qualified applicant pool for meeting the hiring needs of the Border Patrol then the specialized experience requirement would have to be revised or eliminated by OPM from the GS-7 standard in order to hire at that entry level.

No additional resources would be required to upgrade starting inspector and border patrol salaries to a GS-7 level because new positions are costed out at the journeyman level. As such, both new inspectors and border patrol officers are costed out and funded at the GS-9 level. These funds remain in INS' base to fund personnel costs when officers attain journeyman grades; therefore, there are ample funds available to pay these employees either a GS-5 or GS-7 entry level salary, without requiring additional resources.

QUESTION:

What is the target GS level for INS inspectors and members of the border patrol? Is this level ideal for your purposes? If not, what do you recommend? What would it take, legislatively or administratively, to upgrade the target GS levels? How much would it cost for FY 1986?

ANSWER:

The journeyman grade level for immigration inspectors is GS-9. We have been able to operate successfully at this level. Any changes in the grade structure may be handled as an administrative matter, since authority to classify positions and establish qualification standards is the responsibility of the agency and the Office of Personnel Management.

An upgrade in the journeyman inspector level to GS-11 would cost approximately $2.7 million during FY 1986.

The target grade level for a journeyman U.S. Border Patrol Agent is GS-9. This target level does present the Patrol with a problem of attrition of Border Patrol agents to other government law enforcement agencies and to other branches of INS where the target grade level exceeds GS-9. The Border Patrol provides agents with extensive, demanding, and extremely expensive training programs for developing highly experienced law enforcement officers and then loses a high number of them to other agencies which can offer them a job with a higher journeyman grade level.

To upgrade the target grade level administratively, a job classification review of the duties and responsibilities of the journeymen Border Patrol Agent would have to be be conducted by INS with permission from OPM. Based on that review OPM would have to certify that they meet the standards for an upgrade above the GS-9 target.

The increase in basic salary and benefit costs to upgrade the journeyman grade target would be offset substantially through a reduction in the amount of payments now made at the GS-9 level for overtime worked under the Fair Labor Standards Act. Border Patrol Agents that are now receiving FLSA overtime payments at the GS-9 level would not be eligible at a higher target grade in accordance with the provisions of the Act. The total cost increase is estimated to be less than one million dollars annually.

QUESTION:

How much is the uniform allowance per individual? Who is entitled to the allowance? How often is an employee eligible for the allowance? How much do the uniforms of your different branches cost? If the uniform allowance were increased to fully recover the costs of a uniform, how much would it total for FY 1986?

ANSWER:

The proposed 1986 authorization will includes a provision to raise INS' uniform allowance from $125 per employee to $425 for Border Patrol agents and $300 for inspectors.

Inspections -- The Federal Employee's Uniform Allowance Act (5 U.S.C. 5901) and the rules and regulations promulgated thereunder (Office of Management and Budget Circular No. A-30, revised) provide immigration inspectors with an allowance of $125 per year for expenses of acquiring and maintaining uniforms. All officers who participate in inspectional activity are required to be uniformed and are entitled to the allowance.

One complete uniform (first-year uniform requirements) for an inspector ranges from $685 to $725. These figures do not include leather gear required for an armed inspector and rain gear which must meet the specifications concerning color, style, and manufacture.

In FY 1986, it would cost approximately $1,345,200 to fully recover uniform costs for inspectors and non-inspections personnel who participate in inspections duties. The total cost of a change in the uniform allowance, based on the 1985 level of inspectors and other personnel who participate in inspections would be approximately $1,961,750 composed of $1,345,200 for the initial purchase of inspector uniforms and $616,550 for the increase in uniform allowances from $125 per year to $400 per year.

Border Patrol -- The current uniform allowance is $125 per year for each uniformed member of the U.S. Border Patrol and for each Immigration Detention Officer (IDO) of the Service.

The price of one complete Border Patrol uniform, including shoulder straps, holster, handcuff case and cartridge case is approximately $1,487. Each agent must purchase the complete rough duty and dress uniform by the end of his or her first year of employment. The price of an IDO uniform is approximately $614. The cost of maintaining the Border Patrol uniform and the IDO uniform in an acceptable condition is high, about $400 per year for each uniformed officer, because of the unusual wear and tear associated with the Border Patrol and IDO operations.

The total cost of a change in the uniform allowance, based on the 1985 authorized Border Patrol agent (3,028 officers) and IDO (650 IDOs) workforce, would be approximately $1,578,501, composed of $567,051 for the initial purchase of the Border Patrol and IDO uniforms and $1,011,450 for the increase in the uniform allowance from $125 per year to $400 per year.

Contact Representatives -- Contact representative's uniforms cost approximately $387. This funds jackets, skirts, vests and shoes for contact representatives.

QUESTION:

At one inspection station alone last year, you paid $1.3 million in overtime for your inspectors. At the same time, the inspectors at that station were suffering from burn-out from long hours. Why instead of running up such hugh overtime bills, don't you add more inspectors? How many inspectors could you hire and train for $1.3 million?

ANSWER:

For $1.3 million, the Service could hire 78 inspectors at the GS-5 entry level, including initial training costs. An additional 78 inspectors at JFK International Airport, for example, would significantly reduce that port's overtime expenditures, but not completely eliminate overtime. Inspectors must work on Sundays, holidays, and at unusual hours, times in which overtime under the 1931 Overtime Act must be paid. Inspectors are not required to work on their days off, and the overtime burden is shared equitably.

Oakdale Detention Center

QUESTION:

Last year, in answer to a question regarding the Alien Detention Center, Oakdale, Louisiana, you stated that the INS will handle all those activities related to alien removal at the Center. What is the budget for the activities of the INS at Oakdale in FY 1986? How many positions are involved?

ANSWER:

No additional INS resources for the Oakdale Alien Detention Center are requested in the FY 1986 budget. A staff of 43 INS personnel will be located at Oakdale to handle case processing and transportation.

Illegal Aliens

QUESTION:

The following questions relate to INS policies regarding aliens who enter the U.S. by a common carrier without proper or sufficient documentation or who claim asylum.

How many are returned immediately?

How many are detained for further proceedings?

How do you determine which alien shall receive what type of handling?

When an alien in that situation is detained, who pays the costs of that detention?

Is the answer the same even if the detention stretches several months?

Is the answer the same if the carrier can demonstrate a good-faith effort to detect inadmissibility prior to boarding?

What is the statutory basis for your policy?

ANSWER:

In FY 1984, 19,650 aliens were refused admission into the United States at airports. Of that number 19,501 voluntarily withdrew their application for admission and departed the United States. During that same period, 149 applicants for admission were referred for an exclusion hearing before an immigration judge.

An alien normally is given an opportunity to withdraw his application and depart voluntarily from the United States. If he/she does not choose to do so, a hearing is necessary and generally the alien is placed in carrier custody for presentation by the carrier at a time and place specified. Unless the alien represents a threat to the welfare or security of the United States, the carrier is liable for custody until the alien's admissibility has been decided. Similarly, a claimant for political asylum is also returned to carrier custody pending a decision by the INS district director. If it is obvious that the proceedings will require an inordinate amount of time, the carrier is normally relieved from liability and the alien placed in Service custody.

The Service does not direct the carrier to detain as such, although it is obvious that safeguards are necessary in order to avoid a fine. Section 271 of the Act imposes upon the carrier the duty of preventing ". . .the landing of such alien in the United States. . . at a time or place other than as designated by the immigration officers." If, upon arrival, the inspecting immigration officer determines that an alien is not clearly admissible and is likely to abscond, the carrier is ordered to present that alien for further inquiry at a specific time and place. Although the law does not specify that the alien be safeguarded, in keeping with the statutory duty, safeguards are obviously necessary to ensure that the alien is presented as ordered.

Failure of the alien to be presented is prima facie evidence that an unlawful landing has been made and that the carrier is liable to a penalty of $1,000.00 for each landing. It should be kept in mind that such a fine is levied under Section 271 for permitting an unlawful landing and is not an assessment for detention costs under Section 233.

If detention in a Service facility is ordered, the carrier also bears the costs except where exempted by Section 233 (c) in the following circumstances:

1. the alien possesses a valid, unexpired immigrant visa;

2. the alien is admitted following detention;

3. the alien possesses a valid, unexpired nonimmigrant visa;

4. the person claims U.S. citizenship and possesses an unexpired passport;

5. the person claims U.S. citizenship and possesses a certificate of identity issued by a consul and is admitted following detention.

The Service attempts to relieve carriers from liability when it is indicated that custody will exceed a period of twenty-four hours. This is not always possible, but it is the goal.

Federal Prison System

Salaries and Expenses

QUESTION:

Within the budget justification for the Federal Prison System, you state that you intend to decrease the budget for contract Community Treatment Centers (CTCs) by $2 million in FY 1986.

What is your budget for CTCs this fiscal year?

What will it be in FY 1986?

What is the average daily population in your CTCs this fiscal year?

What will it be in FY 1986?

Why are you requesting less for this activity next year?

ANSWER:

The Federal Bureau of Prisons' original 1985 budget request to the Congress of $29,113,000 for contract Community Treatment Centers (CTC's) reflected an increase of nearly $3,913,000 from the 1984 appropriation level and provided, as stated in the budget, resources sufficient to place all eligible inmates in a CTC program for an average stay of 100 days. The $2.5 million added to the request level by the Congress was excess to Bureau's needs for the CTC program. Reductions in some contract CTC rates will in all likelihood enable the Bureau to meet CTC program objectives for the current fiscal year at a funding level below even that originally requested for 1985.

For 1986, the Bureau has requested $30,201,000 for the contract CTC program, an increase of $1,088,000 above the level requested for 1985. The increase provides for some escalation in costs and also permits an increase in the estimated average daily population from 2,650 in 1985 to 2,723 in 1986.

QUESTION:

Last year, Congress increased your budget by $250,000 for legal services to inmates. How was this money spent? Why are you not requesting continuance of this program?

ANSWER:

Immediately after the increased funding was made available for FY 1985, Bureau legal staff were advised to try to establish clinical programs through nearby schools at each institution where such a program was not already available. As a result, there are five additional institutions where inmate legal services programs are a good possibility later this year. If all five programs become a reality, the maximum possible additional expenditure for the current fiscal year would be between $30,000 and $50,000. The $250,000 added by the Congress exceeds the level that the Bureau can effectively spend in this program area. Experience has shown that in order to succeed, these programs must be structured, included in the law school catalog of curricula and, most importantly, undergirded with the supervisory support of the law school staff. Bureau adherance to this approach, plus the facts that funding was not available until late November and that there has been a diminishing interest in inmate programs by law school students, make it difficult to establish such programs.

The addition of these funds in 1985 was not considered to be a recurring initiative in FY 1986.

QUESTION:

How do you intend to reduce your administrative expenses at the FPS by $1,045,000?

ANSWER:

The $1,045,000 was a directed reduction in administrative overhead costs. The Bureau of Prisons expects to work for productivity savings and other more cost-effective approaches to accomplishing the work. At this point in time, however, we have not determined precisely how and where the reductions will occur.

National Institute of Corrections

QUESTION:

Your justification for the National Institute of Corrections states that you provide "specialized assistance to state and local correctional agencies in response to specific requests." Are you reimbursed for these services? If so, how much did you receive in reimbursements in FY 1984?

ANSWER:

The National Institute of Corrections provides technical assistance consultants to state and local correctional agencies to address the agencies' identified concerns. The areas most often addressed are: planning, program development, screening/classification practices, operational procedures, management and staff analysis, prison industries programming, training, policy and procedures development, standards implementation, jail intake services, and institutional security. These services are provided at no cost to the requesting agency and the National Institute of Corrections does not seek reimbursement.

QUESTION:

Within the NIC account, please describe your request for $800,000 for a "Correction for base deficiency". Does this restore the FY 1985 rescission taken pursuant to Section 2901 of the Deficit Reduction Act of 1984?

ANSWER:

The $800,000 adjustment for "Correction for base deficiency" restores a portion of the $894,000 proposed for rescission for the National Institute of Corrections. These reductions were applied against training contracts for the National Academy of Corrections. Although these training contracts are classified as consulting services, NIC has neither the staffing nor expertise to provide these services itself. Therefore, it was decided that this reduction should be taken for one year, FY 1985, and then restored to the base.

Buildings and Facilities

QUESTION:

According to your justification for Buildings and Facilities, FPS, "since January 1981, FPS has experienced a dramatic 37 percent growth" in the inmate population. Later you estimate a two percent growth per year for the five-year period 1985 to 1990. What would happen to the system if the historical levels of growth over the last five years continued to 1990? What would be the level of overcrowding? What factors do you anticipate changing so that the inmate growth rate will drop from 37 percent to two percent?

ANSWER:

If the Federal Bureau of Prisons experienced another 37 percent increase in inmate population between 1985 and 1990, the inmate population would number nearly 46,000. Based on approved and requested cpacity increases through 1986, institutional overcrowding would increase to 51.7 percent. The Bureau did not project that the growth rate would drop from 37 percent to 2 percent. The 1986 budget projected a growth rate for the five-year period 1985 - 1990 of 10.3 percent. Our most recent long range plan projects a growth rate of 14.5 percent for the same period. In acknowledgement of the virtual impossibility of accurately predicting future inmate population levels, the Bureau traditionally, has intentionally developed conservative future estimates of inmate population to insure that funds are not expended in constructing unnecessary prison capacity. While this conservative approach is consistent with current fiscal reality regarding deficit reduction efforts, the Bureau's objective with future budget requests is to keep pace with the continuing increase in the inmate population and to reduce overcrowding substantially.

U.S. Parole Commission

QUESTION:

What is the budget for the research program of the U.S. Parole Commission in FY 1986?

ANSWER:

The U.S. Parole Commission has seven full-time employees in its Research and Program Development Section located in the central office. Personnel costs will run approximately $300,000 for FY 1986. Other costs such as travel, rents, printing, other services, supplies and equipment, are not broken down by the various central office sections.

QUESTION:

What is the total FY 1986 estimate for the Parole Commission's Datapoint mini-computer based, combined office automation/data distribution system? What functions are to be carried out by this system?

ANSWER:

The Datapoint system will cost the Commission approximately $350,000 in FY 1986.

1. This system supports the Commission's word processing needs which include full function word processing software and very flexible printing capabilities.

2. Retrieve, display and/or print data display data from the Parole Data History (PDH) data base.

   The proposed system will provide information concerning all prior paroling actions regarding codefendants of a defendant. Also by retrieving data from the PDH data base, the system should help organize the information in whatever format is most useful to the decisionmaker.

3. Automate typing of the Notices of Action

   A substantial portion of the text in the Notice of Action consists of standard words and phrases. The system will be programmed to produce the standard phrases from one or two character data items, and then merge the standard phrases with individualized text to produce the Notice of Action. Thus, all documents produced at each stage of a parole decision can be accomplished with a substantial reduction in keystrokes by avoiding retyping information that has not been changed from a previous stage, and with fewer errors.

4. Monitor the decisionmaking process to help assure compliance with Commission rules and policy.

   The sytem will edit the information being entered to produce the Notice of Action (and other documents) to assure both valid values and to prohibit decisions that conflict with statutory requirements or paroling policy.

5. Provide timely input to the PDH data system.

   The data entered to produce the Notice of Action will be transmitted to the Department of Justice host computer for updating the PDH data base. With this system, data in the PDH data base should be at most one day behind current parole decisionmaking.

6. Provide communications between the PDH and Sentry Systems

   Information concerning a prisoner's sentence is needed by parole decisionmakers and currently is available from the Sentry system. Also, the results of parole considerations are needed by the Bureau of Prisons and will be available in a timely fashion from the PDH system. A batch communication facility, available through a new

Cullinet Software product (which requires an IBM PC), will enable information transfer between the PDH and Sentry systems. This will provide automatic entry of sentencing information in the production of parole documents, and permit sending the results of parole decisions to the Bureau of Prisons via electronic telecommunications.

7. Electronic mail

   Since each office will acquire a fully compatible system, the system software will provide electronic mail between all offices (including both documents and data) using telephone lines.

8. Consolidate communications hardware

   The proposed system will provide a unified hardware configuration that will permit each terminal to independently, and simultaneously perform any needed communication function.

Foreign Claims Settlement Commission

QUESTION:

The Foreign Claims Settlement Commission plans to commence a project to update its index of decisions. What is the cost of this project for FY 1986?

ANSWER:

The project to update the Index of Decisions of the Commission requires review of approximately 6,000 decisions issued by the Commission and would be carried out by the existing staff. Based upon apportioning the amount of time which would be required of attorneys to conduct this review and of typists to transcribe the index into camera-ready form and the actual cost of printing, we would estimate the project would cost between $35,000 and $45,000.

Antitrust Division

QUESTION:

Is the Antitrust Division providing any case management, litigation contract or any other services to any other divisions in the Justice Department or to any other agency at this time?

ANSWER:

No, the Division is not providing services or support to any other part of the Department or to any other agency.

Fees and Expenses of Witnesses

QUESTION:

The General Accounting Office issued a report on July 12, 1984, entitled, "Justice Needs Better Controls Over Payment of Witness Fees." That report was critical of Justice's handling of fact and expert witness fees. What have you done to correct the deficiencies listed in the report?

ANSWER:

The Department has been active in addressing the deficiencies listed in the report. First, a Department Order entitled "Employment of Experts and Consultants" is in the final stage of the internal approval process. This order revises the policy, regulatory and procedural requirements governing the employment of experts and consultants. Second, the Evaluation Staff, Office of the Controller, is presently surveying Assistant U.S. Attorneys in selected field offices to assess their views on both the Fact Witness and Expert Witness programs. The results of this study are expected in the second half of 1985. Third, the Executive Office for the U.S. Attorneys is reviewing monthly expenditure reports in an effort to locate those field offices which are inadvertently charging the U.S. Attorneys appropriation with expenses that should be charged to the Fees and Expenses of Witnesses appropriation. Finally, the Department's Budget Staff has taken action to inform the U.S. Attorney field offices of suggested methods for improving the processing of expert witness obligations and payments.

The Department plans to continue its diligent efforts to improve the controls over payment of witness fees. Real benefits have already been realized, and prospects for future improvements look bright.

QUESTION:

What is the maximum fee you pay for an expert witness?

ANSWER:

The Department is presently circulating among the organizations involved in the expert witness program a draft order which will update and cancel three existing Orders concerning procedures for incurring and paying expert witness fees and expenses. Included in this order is an appendix which lists rates for expert witness compensation. These rates were established in October, 1982 and will be updated before issuance of the final order. Presently, the schedule places the maximum fee allowable for an expert witness at $750 a day for the testimony of specialized physicians. However, if an attorney is unable to employ a competent expert witness at a rate at or below $750 a day, a request for an exemption can be made to the Special Authorizations Unit of the Procurement Services Staff. Persuasive justification is required before such a waiver is granted.

QUESTION:

What mechanisms do you have in place to control the amount of expert testimony you require?

ANSWER:

The decision to use expert witnesses is made by individual attorneys in the Department's litigating organizations. These individuals are in the best position to assess the need for witnesses within the context of case preparation. While the Justice Management Division (JMD) is reponsible for financial management of the fact and expert witness activities, JMD does not second guess the professional opinions of line attorneys on how best to protect the government's interest.

Recently, the JMD has taken several steps to control expenditures and estimate costs for expert witnesses. First, the automated information system providing reports on the expert witness activity has been reviewed and improved to ensure that accurate expert witness data is available and correct reports are produced. Second, cooperation between the concerned JMD organizations (Budget, Finance, Special Authorizations) and the litigating organizations has been improved. Expert witness coordinators within the litigating organizations are more aware of the resource constraints on the expert witness activity and the need to provide reasonable estimates of future needs. Further, the Department is currently reviewing and will strengthen its orders regarding the use of expert witnesses. These changes will provide better information to senior attorneys in the litigating sections and to the U.S. Attorneys to enable them to exercise improved oversight of this critical litigation tool.

It should be understood that the expert witness program is only marginally controllable. As the demand for experts in technical areas increases, so does the costs of these experts. Private counsel continue to increase their reliance on the testimony presented by experts. To litigate effectively, government attorneys must also employ competent experts. Other factors, such as the growth of litigative activity during this Administration, contribute to the funding pressures in the appropriation.

Cuban Repatriation Program

QUESTION:

The United States and Cuban Governments recently reached an accord whereby the Cuban Government agreed to repatriate 100 Mariel Cubans a month. In the first months after the agreement went into operation, the U.S. actually sent back less than its full allocation of 100. What are the reasons for the shortfalls? What steps are you taking to increase the number of repatriations in future months? What account pays for the costs of repatriations?

ANSWER:

Individual court litigation in the Circuit Court of Appeal and District Court in Atlanta, Georgia prevented the Government from meeting the rate of return allowed by the Cuban Government. U.S. Government attorneys continue to use task force litigation techniques on the class action lawsuit and the individual suits in their efforts to meet the cases filed in litigation with the 11th Circuit Court. The U.S. Government is also increasing the number of names on the manifest for actual removal, however, no more than 150 individuals can be returned in a calendar month. The removal costs are currently being paid by the INS Detention and Deportation Program's Alien Travel, Detention and Welfare fund including the litigation costs incurred by the Legal Proceedings Unit.

Five Percent Salary Cut

QUESTION:

Please provide a breakdown by account of the savings realized from the five percent pay cut.

ANSWER:

Savings realized from the five percent salary reduction are reflected in the following chart.

Five Percent Pay Reduction

Appropriation	Savings ($000)
General Administration....................	$1,584
U.S. Parole Commission....................	194
General Legal Activities..................	4,299
Antitrust Division........................	846
Foreign Claims Settlement Commission......	21
U.S Attorneys and Marshals................	10,695
Community Relations Service...............	161
Federal Bureau of Investigation...........	21,518
Drug Enforcement Administration...........	5,678
Immigration and Naturalization Service....	14,030
Federal Prison System:	
Salaries and Expenses....................	9,096
National Institute of Corrections.......	46
Buildings and Facilities................	74
Total, Federal Prison System..........	9,216
Office of Justice Program.................	715
Total, Department of Justice..............	68,957

General Administration

QUESTION:

How will the Justice Management Division and the Office of Professional Responsibility be affected if a statutory Inspector General is created for the Justice Department?

ANSWER:

The Department has taken the consistent position that any Inspector General legislation must recognize the Attorney General's responsibility as the chief law enforcement officer and chief litigator of the Federal Government. The previous versions of these proposals have not recognized this principle. More specifically, none of the previous versions have recognized the broad responsibilities and role of the Counsel, Office of Professional Responsibility (OPR). The bills have not acknowledged that the Counsel, OPR has more authority than an Inspector General would have, nor have the versions reconciled the responsibilities between the Inspector General and the Counsel of OPR.

With regard to the Justice Management Division (JMD), previous versions of Inspector General legislation have failed to take account of the evaluation units in JMD and in other divisions of the Department. These units have a significant role in assisting management and should not be merged into an Inspector General's office, as the past bills have proposed.

General Legal Activities

Civil Division

QUESTION:

Asbestos torts litigation cases are expected to increase by 1,330 percent between 1984 and 1986 while other defensive cases are expected to increase by 27 percent. What is the total of the current monetary claims against the Government in asbestos cases? To what extent will these monetary claims increase if the projected new asbestos case filings materialize in FY 1986? What is the current and projected cost to the Justice Department in defending asbestos suits against the Government?

ANSWER:

Currently (as of April 30, 1985), there are 3,048 cases involving 98,405 claims of $6.1 billion pending against the Government. Based upon our assessment of likely future litigation and upon historical trends and published research we expect the asbestos caseload to reach 7,072 cases involving 152,986 claims of $15.5 billion by the end of 1986. The expense to the Department during 1985 will be over $10 million and expenditures in 1986 will be close to $11 million.

This information is detailed further in the attached chart Asbestos Caseload and Expenditures. These numbers reflect our most current estimates. While the caseload estimate for 1986 is less than originally projected, the number of claims involved in those cases is higher.

The number of claims is a more appropriate measure of litigation workload than is the number of cases. There are significant factual and legal variations among the claimants involved in each case and each must be reviewed separately regarding the reasonableness of the remedy sought and the adequacy of the defense. In effect, a separate judgment or settlement is being sought in each claim which ultimately may require particularized discovery and separate trial.

Asbestos Caseload and Expenditures

	1983 Actual	1984 Actual	1985 Estimated 1/	1986 Estimated
Pending Cases (Start of Year)	1,217	1,785	2,744	4,362
Received	582	1,002	1,668	2,760
Terminated	14	43	50	50
Pending Cases (End of Year)	1,785	2,744	4,362	7,072
Pending Claims (End of Year)	29,786	88,726	106,788	127,078
Dollars at Issue (End of Year)	$3.8 Billion	$5.7 Billion	$9.5 Billion	$15.5 Billion
Expenditures	$5,211,393	$5,852,374	$10,371,500	$10,915,300
Workyears Used (Attorneys & Support Staff)	35	51	52	54

1/ Currently pending (4-30-85), 3,048 cases involving 98,405 claims of $6.1 billion.

QUESTION:

What are the alternatives to costly litigation in these cases? Have all of the possible alternatives been considered and tested?

ANSWER:

Our experience is for the most part limited to suits against the government by manufacturers of asbestos-bearing products and our response is accordingly limited thereby. These manufacturers claim indemnification for settlements and judgments paid or payable to persons injured by exposure to asbestos from their products. These claims assert governmental liability both in tort law and contract law. The statutes permitting tort claims against the government require and provide an opportunity for adjustment and settlement administratively, at the outset, without litigation. Many tort claims are resolved satisfactorily and expeditiously in this manner where liability is clear. In asbestos cases, however, liability is denied by the government and there is no statutorily authorized vehicle available to the manufacturers to pursue their tort claims except litigation. In most cases, courts which have considered the pertinent liability issues, have affirmed the government's position thereby vindicating prior governmental decisions not to settle the manufacturers' claims administratively. If the government's legal responsibility to the manufacturers were established, however, a relatively economic vehicle for resolution of such claims without litigation exists. In the meantime, however, there is no restriction upon the right of the manufacturers to persist in advancing in the courts novel claims against the government to attempt to transfer their liability to the taxpayers.

Civil Rights Division

QUESTION:

Three of the Division's programs--Special Litigation, Employment Litigation, and Housing and Civil Enforcement--have major objectives of monitoring compliance with consent decrees and court judgments. Follow-up on settlements is crucial to ensure successful enforcement of civil rights laws.

What are the Division's policies regarding monitoring of case settlements? Describe how compliance with settlements is monitored, for example, are FBI investigators used? Does each program's management information system include data on compliance with settlements? How is this data used?

ANSWER:

Monitoring compliance of consent decrees and court judgments is handled somewhat differently in the Special Litigation, Employment Litigation and Housing and Civil Enforcement programs because of unique areas and methods of responsibility. Following is a summary of each program's monitoring procedures:

Special Litigation--The program aggressively monitors compliance achieved in both court judgments and consent agreements filed in cases on its docket. Progress made in institutions as a result of such agreements or the lack thereof, is monitored carefully. Monitoring activities include analysis of reports filed by defendants, court-appointed monitors, information generated by other parties, and, most importantly, on-site inspections. As a result of such analysis, the Division frequently initiates other enforcement actions.

In United States v. Indiana, the Federal Government moved quickly to meet with state officials to discuss their compliance with the April 1984 consent decree; we re-toured the subject mental health facilities and offered defendants technical assistance to achieve compliance. In United States v. Maryland, the program quickly dispatched an expert consultant to re-evaluate efforts made by the State to correct deficiencies at Rosewood Center, Maryland's largest residential center for the mentally retarded, and arranged for him to meet with state officials to explain his findings. Similarly, expert consultants evaluated conditions of confinement inside Michigan prisons which were the subject of United States v. Michigan. Program staff continues to meet with defendants, monitor reports and evaluate progress made in achieving compliance with the consent decree.

In 1984, the program participated as plaintiff-intervenor in the Canterino v. Wilson (W.D. Ky.) compliance action. The United States interviewed women inmates of the Kentucky prison system, evaluated facilities with expert consultants, presented testimony at the hearing and was successful in obtaining further relief for female inmates in the system. In Ruiz and the United States v. Procunier (S.D. Tex.), the program carefully reviews compliance reports developed by the court-appointed Special Master's office, and works closely with both parties to monitor improvements made within the Texas prison system.

Agents of the Federal Bureau of Investigation are not generally used to assist in monitoring of such decrees due to the nature of their subject matter. The program's management information system contains the name of each case, district, judge, basis for participation, and file number. Docket reviews are held to discuss each case, including monitoring activities, with the appropriate attorneys and paralegal personnel.

Employment Litigation--It has for many years been the policy of the Division in employment cases not to accept settlement except in the form of a consent decree or other court order. In the Employment Litigation Section, we do not consider a case as completed when a consent decree or decree after trial is entered. When the decree is entered the same lawyer who negotiated the settlement which resulted in entry of the consent decree, or who litigated the case and prevailed, remains assigned to the case in order to secure compliance with the decree.

Frequently with the assistance of a paralegal, the lawyer assigned to the case reviews the periodic reports which our decrees require, to determine what progress or lack of progress is occurring under the decree. The form of the report varies from decree to decree but they are usually summary in form and have a statistical component. In addition to the report, the lawyer handling the case may receive telephone calls or letters from witnesses, persons he interviewed in the course of the investigation of the matter or preparing the case for trial, or some other sources who have learned who the government lawyer is.

From both the reports of defendants and the information from other sources, the lawyer monitoring the decree can frequently determine whether there are problems and what the nature of the problem is. If the reports leave the lawyer in doubt, he or she usually has the right under the decree to request a special report or access to the records of the defendants. In addition, since the case is still on file, it is usually possible to take depositions or conduct formal discovery, if that proves necessary.

If problems arise which cannot be resolved through negotiations, a formal motion is filed and the matter is brought to the attention of the court for resolution. While the overwhelming majority of problems pertaining to the defendants' compliance with court orders are resolved without contested litigation, it is not at all unusual for a motion for supplemental relief to be filed and for the dispute to be submitted to the court for decision after an evidentiary hearing.

While we occasionally use the FBI in connection with compliance with the consent decree, as in other matters, that is not the usual method of securing information.

The reports from defendants are not in a form which has permitted us thus far to place them on automated data processing equipment.

Housing and Civil Enforcement--Following the entry of a consent decree or other final order, the case is transferred to the Program's Enforcement Unit (composed of paralegals) for monitoring compliance with the terms of the order. The attorney who handled the case is requested to provide a "transfer memo" to the paralegal assigned to review and analyze compliance reports. Immediately upon being assigned a case and receiving the transfer memo, the paralegal sets up a compliance file and implements procedures described in the "Compliance Report Guidelines" and "Enforcement Procedures". Copies of these documents have been provided to the Subcommittee.

Periodic reviews of the paralegals' analyses are conducted to ensure that monitoring is current and that any problems are resolved. If reports and analyses suggest that a defendant may be violating the terms of the decree, the paralegal or attorney may conduct a records inspection, interview possible "victims", etc., to determine more fully whether the defendants are in compliance. The FBI may also be requested to conduct interviews or assist in records inspections. Based upon results from this inquiry, we may recommend the filing of a contempt action or request modification of the decree if other efforts to resolve noncompliance are unsuccessful.

At the expiration of the decree, if the defendants have satisfied the terms and conditions of the order, the assigned paralegal is responsible for closing the case.

QUESTION:

Accomplishment and workload data for the coordination and review program show responses provided citizens and public officials fell from 3,465 in 1983 to an estimated 200 in 1985. Describe what these responses involve. What accounts for the precipitous decline in responses? How are the resources freed up from this activity to be used in the future?

ANSWER:

During 1983 and 1984, the Coordination and Review Program received several thousand letters and comments from citizens and public officials in response to proposals to issue regulations and implement Section 504 for Federally assisted programs and in programs conducted by the Department of Justice. Documents were read, coded, analyzed and summarized. Acknowledgement postcards were sent.

The program has no plan to propose or issue comparable regulations in 1985 or 1986. Accordingly, the workload for this category is expected to drop to around 200 per year. No additional resources had been obtained to handle the comments on the proposed regulations. Staff assigned this responsibility have been reassigned to their full-time coordination and legal duties.

U.S. Attorneys and Marshals

QUESTION:

Why should the Government pay for the costs associated with firearms matches within the U.S. Attorneys and Marshals account which are primarily recreational instead of training oriented?

ANSWER:

All federal law enforcement agencies devote considerable time and resources in the area of firearms and firearms training. The single most important item a law enforcement officer has in his inventory is the weapon he carries. Continued research and development is absolutely essential to ensure that the weapons issued and carried are the finest quality available, have adequate safety features, and are always in good working order. Similar concerns are also relevant concerning the ammunition used in these weapons.

The exchange of information and the development of ideas and ongoing experimentation with both weapons and ammunition are essential to our respective law enforcement missions. Historically, we have determined that some of the firearms matches hosted by federal agencies, in addition to those sponsored by recognized experts in this field (such as the National Rifle Association), have been the best environment to exchange information and test the considerable amount of new equipment surfacing in the market each year. We have found this learning process to be invaluable, testing and evaluating state-of-the-art weapons and weapon components, e.g., sights, grips, loading devices, etc.

The U.S. Marshals Service (USMS) continues to look at new products offered by firearms manufacturers, including not only the weapon and ammunition, but also the leather holsters, ammunition pouches, etc. It would be impractical to have every vendor make a presentation to our people, and it would be just as impractical to test personally every item offered.

Often, we find weapon matches to be the best environment to pool information and exchange ideas. Further, all participants from the USMS are firearms instructors, making it essential that they continually hone their teaching and firing skills.

In addition, the ability to participate in firearms matches is an invaluable motivational tool in promoting the firearms proficiency of our employees.

QUESTION:

You are requesting a legislative change authorizing U.S. attorneys and marshals to lease and acquire passenger motor vehicles without regard to the general purchase price limitation. Why do U.S. attorneys and marshals need to lease and acquire passenger motor vehicles more expensive than the general price limitations?

ANSWER:

The U.S. Marshals Service requires the authority to purchase or lease large size sedans costing in excess of the maximum price limitation due to the overall nature and the character of its duties.

The movement of federal prisoners, frequently over long distances, is a traditional function of the Marshals Service which requires a large-sized car. Security considerations frequently mandate that the car have a passenger capacity of at least six large adults along with adequate performance with this load. Before vehicle manufacturers downsized body and engines, a so-called mid-sized car sometimes was adequate; today it is not. Marshals Service security requirements and the physical size of deputies or prisoners have not changed, but the definitions of mid- or large-sized sedans have.

In the last several years, the responsibilities of the Marshals Service for the apprehension of federal fugitives have greatly increased. Numerous vehicle pursuits while engaged in warrant investigations or apprehensions have necessitated the need for "police package" vehicles. These cars feature larger, heavy-duty high-output engines for increased speed, special heavy-duty suspension, transmission, cooling and frame components, and special steering. Obviously, these features cost more than a regular production sedan, but the enhanced mission capabilities, durability, and safety make it well worth the price in this application.

In addition, the Service has greatly expanded its activities in the areas of witness security and personal protection of federal judges and U.S. Attorneys. These programs require full size law enforcement vehicles capable of evasive maneuvers in the event of attack and the ability to transport the personal belongings of protectors.

QUESTION:

Which juvenile justice programs will not be funded if the $12.3 million is transferred from those programs to the U.S. Marshals Service as requested? Specifically, for which programs were these funds originally appropriated?

ANSWER:

The $13 million of Juvenile Justice funds which were carried over from 1984 came from a variety of areas. One of the 1980 Juvenile Justice amendments provided that non-participating state funds which had not been used by state and local organizations in those states plus deobligated formula and special emphasis funds must be made available to states which were in full compliance with the deinstitutionalization and separation provisions of the Act. There was a total of $3,600,000 available for this purpose in the total amount carried over. The carryover funds also included $1,125,000 from the FY 1984 appropriation which was allocated to the non-participating states and would have been made available during FY 1985 to state and local organizations in those five states to carry out formula grant purposes. The balance was funds from discretionary programs that were proposed in the 1984 program plan. These programs were Privatization of Probation ($2 million); Private Sector Corrections ($4 million); Reading Program for Juvenile Offenders ($370,000); Reduction of Gang Violence ($900,000); a juvenile treatment facility ($363,000) and several small projects.

If the transfer of $12,226,000 to the U.S. Attorneys and Marshals Service is approved, the $3,600,000 will not be awarded to the 34 states in full compliance with the deinstitutionalization and separation provision. We have changed our procedures for awarding non-participating state formula funds to other organizations in those states and therefore the 1985 funds will be made available this fiscal year rather than 1986. Accordingly, the return of the $1,125,000 of 1984 carryover funds would duplicate 1985 funds available for this purpose. Only two of the other projects listed above will not be funded in 1985, Gang Violence and the Reading Program. Even if the $12,226,000 were returned for Juvenile Justice use, these projects would not be funded because the applications were unsatisfactory. In other words, if the $12,226,000 were returned for Juvenile Justice use, $3,600,000 will be awarded to the states in full compliance with the deinstitutionalization and separation provisions. The balance would be used in 1986 for non-participating states and to expand the OJJDP discretionary program.

QUESTION:

You state that judicial security demands have increased because of numerous and lengthy detention appeal hearings by defendants denied bail under provisions of the Comprehensive Crime Control Act of 1984. What is the average length of time for these hearings? How do these statistics compare to those for bail and bond hearings before the Act's enactment?

ANSWER:

As early as October 1984, we began receiving reports from our district offices indicating that they were experiencing increases in the amount of time spent in magistrates' courtrooms with prisoners at initial appearances.

To confirm this information, 12 representative Marshals Service districts were asked to collect data on the duration of detention hearings. A total of 158 detention hearings were included in the survey. During the survey period, 66.9 percent of the detention hearings which occurred in these districts lasted less than one hour, while 30.5 percent lasted between one and four hours. The remaining 2.6 percent lasted over four hours. (Although this is a small percentage of the total number, it can be a significant workload as in the recent New York City case involving the defendants in the Brinks Robbery in which the detention hearing lasted three weeks and involved 14 deputy U.S. marshals, or in the Cleveland, Ohio case of Raymond Levasseur in which six hearings were held requiring the presence of seven deputy U.S. Marshals before Levasseur was extradited to Maine.)

To simplify the reporting procedure, the districts were instructed to check off the appropriate category rather than specify the amount of time spent in court. While this prevents us from having an exact average, using the medium time per category we can estimate an average length of time at slightly more than one hour per hearing.

Because there is a significant difference in the procedural requirements for a detention hearing as compared to a bail hearing (e.g., the ability of calling witnesses, establishing clear and convincing evidence rather than just a preponderance of the evidence, etc,), we believe that the information we have received from our district offices is correct and that the results of the 12-district survey can be generalized to apply to all Marshals Service districts.

Although we do not have any specific data on the average length of time involved in a bail or bond hearing before the enactment of the Act, our district offices have consistently maintained that a bail or bond hearing generally lasted ten to fifteen minutes.

From December 17, 1984, through March 31, 1985, the 94 Marshals Service districts have reported a total of 5,968 detention hearings at which they have provided judicial protection. Because the provisions for such a pretrial proceeding did not exist prior to the enactment of the Act, we consider these hearings to be new workload, even though some of them might previously have been a bail or bond hearing. (NOTE: This number is higher than the total reported by the U.S. Attorneys for several reasons. Our districts consider each session that they attend as a separate hearing, although it might be a continuation of one detention hearing as counted by U.S. Attorneys. We are also aware of cases in which the federal court and the Marshals Service have referred to a proceeding as a detention hearing, but the U.S. Attorney has called the hearing a bond hearing.)

QUESTION:

You state that no judges, magistrates, or judicial officers were injured as a result of an attempted assault in 1984. How many attempted assaults were there?

ANSWER:

During FY 1984 there were seven attempted assaults which were thwarted by the U.S. Marshals Service's personnel.

Federal Prison System

Salaries and Expenses

QUESTION:

Farm operations are conducted at three Federal prisons. Do these operations pay for themselves? If so, why are there not more farm operations in the Federal Prison System?

ANSWER:

Several years ago the Federal Bureau of Prisons conducted an analysis of the cost effectiveness of the eight farm operations then in effect at several institutions. From this study it was determined that just three of the eight farms could be operated at no net loss. After a thorough review of the facts and consideration of alternatives, farm operations were discontinued at five locations. The current economic reality for farming operations, particularly in the correctional setting with the added costs of custody, is that it will become increasingly difficult to operate the farms on a "break even" basis.

QUESTION:

You estimate that only one percent of your confined inmates will be involved in assaults, homicides, suicides, and escapes for any one year. How does this rate compare to state and D.C. correctional systems?

ANSWER:

Statistical comparisons with state correctional systems are difficult to do accurately because the data is seldom collected in a way that ensures true comparability across over 50 systems. We can, however, make some generalized estimates based on data reported in publications such as the 1984 Corrections Yearbook.

In 1983, the most recent year for which we have national corrections data, that publication reported the total number of serious incidents, i.e., insider escapes, homicides, and suicides, in non-Federal facilities to be 3.218 or 0.83 percent of the average daily population. The Federal system recorded 75 such incidents, or 0.25 percent of its population.

If one includes in the 1983 Federal data walkaway escapes from minimum security facilities and community programs, the Federal percent increases to 1.3 percent. The comparable statistic for non-Federal facilities was 1.8 percent.

Federal Prison Industries

QUESTION:

You note that FPI sells products and services to other Federal agencies at a profit consistent with the goal of remaining financially self-supporting.

Do you have any policy regarding the amount of profit the corporation considers reasonable for overall operations, for an individual product or service, or for a customer order?

ANSWER:

FPI does have a policy regarding pricing for products and services. The fair and reasonable price for products and services is the current market price, i.e., the price which would be obtained by competitors for the same or similar products and services at the time of delivery. Each product division must establish procedures for arriving at prices and must document this action for purposes of being able to justify these prices to either customers or auditors. Prices established are to be no greater than the current market price for products of the same quality and specifications. As a general guideline, the price of goods and services should yield a profit of approximately 15%, however, this may be adjusted up or down due to market conditions. In some cases it may be necessary to price items at less than cost in order to keep inmates employed, or to remain in the market.

QUESTION:

What was the corporation's net income (revenue less all income statement expenses) for FY 1984? What is the expected net income for 1985? 1986?

ANSWER:

Net Income - FY 1984 - $15,034,692
Net Income - FY 1985 - $16,300,000 (Estimated)
Net Income - FY 1986 - $18,000,000 (Estimated)

QUESTION:

FPI provides hundreds of different products and services to Federal agencies.

To what extent do you receive customer complaints about quality, timeliness, and prices?

ANSWER:

FPI recorded gross sales of $200,164,586 in FY 1984. Despite this sales volume, customer complaints were relatively few. The infrequent complaints that are received are addressed immediately and resolved to the customer's satisfaction. A review of field and central office customer complaint logs in 1984 indicated a relatively low level of complaints.

QUESTION:

How does this complaint rate compare to others who supply Federal agencies?

ANSWER:

A recent review of private sector complaint rates indicated that FPI's rates are comparable to, or less than, a private company which supplies similar products to Federal agencies.

QUESTION:

What means or systems are used to stay abreast of customer satisfaction and identify problems they have with the products and services you provide? How do you compare your performance with other procurement sources?

ANSWER:

Customer complaint logs are maintained at field locations and in each product division in the central office. Central office, divisional and field marketing staff communicate daily with customers, either by telephone or through marketing trips to the customer's business location. An FPI customer response card is included in each shipment of products. A written product warranty accompanies each product which assures customers that materials and workmanship meet contract specifications. Customer inquiries are invited in the event quality, pricing, or delivery problems are encountered. In addition, our customers are provided with a written quality policy which emphasizes FPI's commitment to provide products and services exactly as specified, defect free, priced competitively, and delivered on time.

FPI's marketing studies indicate that the corporation's overal performance approximates, or exceeds, other procurment sources for Federal Government departments and agencies.

National Institute of Corrections

QUESTION:

You note that one of the institute's emphases is programs which promote the use of alternatives to incarceration. What types of alternatives are being considered? Are they likely to have any real impact on the overcrowding problem now faced by the nation's prison systems?

ANSWER:

Alternative programs operate at pre- and post-sentence stages of the criminal justice process. Pre-trial alternatives to detention are citation release, release on recognizance, conditional or supervised release and bail. Post-sentence alternatives to jail and prison confinement include:

- Fines
- Community service work orders
- Victim restitution orders
- Intermittent confinement (often night or weekend)
- Split sentences/shock probation -- offenders serve a portion of sentence in confinement and the remainder under community supervision
- Mandatory treatment programs for alcohol or drug abuse offenders
- Probation/parole supervision (ranging from low to "intensive supervision")
- Residential placement as a condition of probation or parole
- Supervised work release and a variety of supervised or work furlough programs
- Mandatory supervised release for offenders being released at the end of a prison sentence.

The degree to which these alternatives will reduce prison populations is dependent on the rate at which states choose prison or community sanctions as the form of punishment for offenders.

Immigration and Naturalization Service

QUESTION:

One of the INS' objectives for investigations is to investigate matters referred by other Service branches in order to locate aliens who have absconded from Service proceedings. How many aliens absconded last year and how successful was INS in apprehending them?

ANSWER:

In FY 1984, 10,980 aliens were referred to Investigations as having absconded. Timeliness of the referral and the likelihood of prompt removal were considered in accepting the referrals for investigation. 4,442 investigations were completed and 1,720 absconded aliens were taken into custody.

QUESTION:

How many aliens were taken into custody for Service proceedings upon the completion of a term of incarceration imposed after criminal prosecution? What types of crimes had these aliens committed and what was their average period of incarceration? Also, indicate the number and reasons for any aliens INS failed to take into custody after incarceration. Has there been any substantial change over the past five to ten years in the number of aliens incarcerated for crimes and the types of crimes committed by such aliens?

ANSWER:

The Investigations program seeks to apprehend aliens who would be deportable under Section 241 (a)(4) or 241 (a)(11) of the Immigration and Nationality Act on the ground that they have been convicted of a crime involving moral turpitude, or of terrorism or subversive activities. In FY 1984, 2,963 incarcerated aliens were taken into custody. While the criminal history of an alien is recorded and evaluated in the deportation proceedings, the information is not maintained in Service statistical records. The Service receives notification of incarcerated aliens from state, local, and other federal law enforcement agencies and prison authorities at the time of conviction, during the period of incarceration, or at the time of release. The Service does not have information concerning the number of incarcerated aliens or the type of crimes they have committed.

Justice Management Division

QUESTION:

The Department reported in its second year Financial Integrity Act (FIA) report that its accounting system does not conform to the Comptroller General's Accounting Principles and Standards. What specific actions does the Department have planned to correct these deficiencies and improve its accounting system? Has the Department developed a master Departmentwide plan to improve its system? If so, who is responsible for implementing the plan? How much does the Department plan to spend to upgrade/enhance their accounting system? How will these costs be controlled?

ANSWER:

The Justice Management Division (JMD) staff directors, using a planning methodology, developed a five-year strategic plan for Automated Information Systems (AIS). From the JMD AIS Strategic Plan, an AIS Tactical Plan identifying 29 discrete projects was developed which addressed resource requirements and timing. Implementation of the plan commenced in February 1984.

Upon initiation of the Accounting Project, it was recognized that it was necessary to incorporate three other identified AIS Projects into a single effort in order to develop an integrated Financial Management System (FMS) and correct the deficiencies noted in the Financial Integrity Act report. These projects were the Procurement, Property Management and Budget Systems. Accordingly, the Financial and Administrative Management Information System (FAMIS) was identified to encompass the AIS projects of Accounting, Budget, Procurement and Property Management.

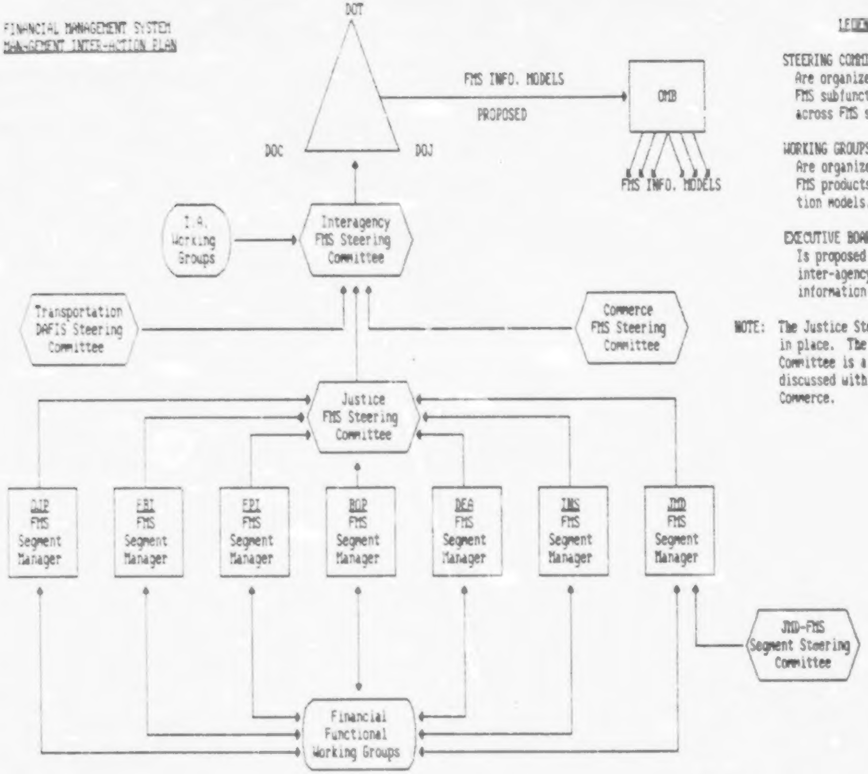
In the FY 1985 Budget passback, the Office of Management and Budget (OMB) directed JMD to develop a Departmentwide Accounting System or to justify in detail why it could not. A contract was let to the firm of Price Waterhouse to examine the feasibility of developing a single Department of Justice (DOJ) Accounting System. Based upon the results of this study, JMD decided to develop the FAMIS system as a prototype FMS for the Department.

Anticipating the requirements of OMB Circular A-127, the Finance Staff established a Departmental Financial and Accounting Working Group (FAW) to assess FMS issues, coordinate action among DOJ components, and to recommend actions to be taken.

A contract has been awarded to the firm of Price Waterhouse to document the requirements of the FAMIS system, develop the system definition, and perform the advisability study. The present contract includes a government-exercisable option to permit the contractor to perform the preliminary system design.

A Departmental order has been developed which establishes a management planning process to accommodate the requirements of A-127. The end product of the A-127 planning process will be a single Departmentwide plan. We have implemented a comprehensive Departmental management interaction plan to facilitate and coordinate the planning process. (See attachment #1.)

FINANCIAL MANAGEMENT SYSTEM
MANAGEMENT INTER-ACTION PLAN


DOT
DOC
DOJ
FMS INFO. MODELS
PROPOSED
OMB
FMS INFO. MODELS
I.A. Working Groups
Interagency FMS Steering Committee
Transportation DAFIS Steering Committee
Commerce FMS Steering Committee
Justice FMS Steering Committee
OJP FMS Segment Manager
FBI FMS Segment Manager
EPI FMS Segment Manager
BOP FMS Segment Manager
DEA FMS Segment Manager
INS FMS Segment Manager
JMD FMS Segment Manager
JMD-FMS Segment Steering Committee
Financial Functional Working Groups

LEGEND

STEERING COMMITTEES -
Are organized to coordinate FMS subfunctions and priorities across FMS segments.

WORKING GROUPS -
Are organized to formulate FMS products and information models.

EXECUTIVE BOARD -
Is proposed to develop inter-agency consensus on information models.

NOTE: The Justice Steering Committees are in place. The Inter-Agency Steering Committee is a DOJ Proposal being discussed with Transportation and Commerce.

The chairman of the Financial Management System oversight committee is the Department's Controller, Charles R. Neill, Deputy Assistant Attorney General, Justice Management Division.

With regard to cost estimates and project management and control, we have implemented a sophisticated automated project management system which is integrated with a computer-assisted software engineering system.

In FY 1985, we will complete the requirements analysis, system definition and advisability study at a cost of approximately $1.2 million. Estimates for FY 1986 and beyond depend to a large extent on the results of the requirements analysis, advisability study and the Departmentwide plan. These studies determine the data requirements of the system and the most cost effective strategy for proceeding into preliminary design, detail design and development. Our most recent guidance states "No upgrading of DOJ accounting systems should be undertaken until the government-wide generic system is available." The Department's reply to this guidance is also attached (see attachment #2). The Department of Transportation (DOT) is the OMB lead agency for the generic accounting system. The DOT Inspector General has issued a report on the project.

ATTACHMENT #2

Accounting System

JMD will continue its effort to develop a requirements analysis for a new Departmental accounting system as a part of its overall plan to implement a financial management system (FMS) consistent with OMB Circular A-127, "Financial Management Systems." These requirements will be provided to the Joint Financial Management Improvement Program (JFMIP) and to interested Federal agencies, including the Department of Transportation.

Representatives of the Departments of Justice, Commerce, and Transportation have discussed a joint management approach to developing finanical information models for use by other Federal agencies. The representatives agreed that some common requirements could be developed. The representatives discussed a mutual concern regarding the feasibility of shared software for use in ADP environments as diverse as those of the collective bureaus and administrations of the three Departments. Similar discussions have been held with representatives of the JFMIP.

All Department of Justice bureaus are represented on the Department's Financial and Accounting Working (FAW) Group and are involved in analyzing information requirements. The FAW Group jointly developed the Department's FMS Order and will formulate FAS planning products for review by the Departmental FMS Steering Committe which was established by the FMS Order. The FAW Group is one of the user evaluator groups involved in the Justice project to develop a Finanical and Administrative Management Information System (FAMIS).

All Justice bureaus are also represented at senior financial management levels on the Department's FMS Steering Committee. The Committee provides a framework for building management consensus on financial requirements, priorities, and plans. Experience has shown that the long-term success of a system with a broad and diverse body of users is predicated on the acceptability of the system to the system's users and operators. We feel that a consensus-building approach will also facilitate inter-Departmental activities in this area. In this vein, JMD requirements will be matched against bureau requirements, and Departmental products will be processed through the FAW Group and the FMS Steering Committee.

We have enclosed a Management Interaction Plan which depicts the relationships that will facilitate the development of consensus-based financial management information models. We recommend that the JFMIP provide a moderator for interagency negotiations of financial information models.

OMB Circular No. A-127 and the related OPM memorandum provide for FMS enhancements only as a part of a single Department-wide FMS plan. In addition, these OMB policies require that a FMS will be developed consistent with information models developed by lead agencies. The Department of Justice continues to participate with the Department of Transportation, we agree with the OMB policies, and will fund only system enhancements which are consistent with the OMB Circular and with statutory requirements affecting accounting systems.

QUESTION:

We understand that the Department has recently established a new Office of Policy and Planning within JMD. Why was this Office established?

ANSWER:

Given the Administration's emphasis of improving and streamlining administrative support, the Department believes that it is necessary to establish a new office to coordinate these activities. The general mission of the Office is to develop, control, plan and direct, on behalf of the Assistant Attorney General for Administration, Departmentwide policies, plans and procedures for the improvement of Departmental management and productivity.

To begin efforts in this area, only detailed employees have been provided. When a productivity improvement agenda has been approved, the Department will consider whether to establish this office permanently.

QUESTION:

What is the role/mandate of this Office?

ANSWER:

The general functions of the Office are as follows:

- Promotes, plans and coordinates management and productivity improvements throughout the Department.
- Plans, reviews and coordinates management and productivity improvement initiatives and studies and makes recommendations to top-level officials and program managers.
- Provides advice and counsel to the Assistant Attorney General for Administration on all matters relating to management and productivity improvement.
- Develops Department-wide policies, plans and procedures for management and productivity improvement and reviews their implementation.
- Represents the Department in its contacts with the Office of Management and Budget and all Federal departments and agencies on matters relating to management and productivity improvement.

QUESTION:

Will the office focus on long-range program planning or on administrative issues?

ANSWER:

The primary focus will be on administrative issues and how productivity can be improved in the area of administrative support services.

QUESTION:

The Department's central audit group, located within JMD, reports to a level several layers removed from the Attorney General and and Deputy Attorney General.

Why does the Audit Staff report to the Assistant Attorney General for Administration instead of the agency head or deputy agency head as required by GAO standards and OMB Circular A-73?

ANSWER:

The Audit Staff carries out its audit responsibilities under the general direction of the Acting Assistant Attorney General for Administration (AAG/A). However, this has not affected the conduct of audits performed of the Department of Justice's (DOJ) programs, operations, activities and functions. The Audit Staff has complete independence in selecting programs for audit, establishing the scope of those audits, conducting them as it sees fit, and making such reports and recommendations as it deems appropriate. Results of audits of programs of the Justice Management Division, which the AAG/A heads, are reported to the Attorney General and the Deputy Attorney General--not to the AAG/A. In addition, all audit reports, irrespective of the unit audited, which contain especially significant findings are provided to the Deputy Attorney General or Associate Attorney General.

QUESTION:

What impact, if any, has this reporting level had on the type of work performed and where it has been performed?

ANSWER:

As stated in the response to the previous question, no limitations have been placed on the audit activities of the Audit Staff. In FY 1984, 41 percent of total internal audit time was expended on Departmentwide audits: audits of programs which encompass several Department organizations including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Immigration and Naturalization Service (INS), the Bureau of Prisons (BOP), and the United States Marshals Service (USMS). In addition, 8.5. percent of internal audit time was spent solely on audits of the FBI, 11 percent on BOP and 12 percent on DEA. The remaining internal audit time was spent performing audits of the Federal Prisons Industries, Inc., the INS, the Office of Justice Programs (OJP), the USMS, the Executive Office for United States Attorneys (EOUSA), the Community Relations Service (CRS), the Justice Management Division, the Land and Natural Resources Division and INTERPOL. When performing external audits in FY 1984 the Audit Staff reviewed grants, contracts and other agreements made by OJP, CRS, and the Executive Office for United States Trustees.

QUESTION:

To what extent has the Audit Staff performed program reviews within the bureaus and litigating divisions?

ANSWER:

Through its internal and external audits, the Audit Staff annually has provided audit coverage of every bureau in the Department. Although the Audit Staff regularly performs audits of the EOUSA, audit coverage of the litigating divisions is usually provided during the conduct of Departmentwide audits. Occasionally, we do audit a single litigating division.

Information Technology
Justice Management Division/Working Capital Fund

QUESTION:

Please provide the Subcommittee with documentation which will provide detailed user requirements for the Justice Data Centers and explain how these requirements were translated into specific hardware and software needs for each data center?

ANSWER:

The Computer Technology and Telecommunications Staff (CTTS) utilizes regression analysis, user discussion and delphi technique (organizations exchange and comment on each others information) to determine detailed user requirements. The following studies/surveys have been conducted to determine the workload and to translate requirements into hardware and software requirements:

- "Present DOJ ADP Environment and Projected ADP Workload: Project 80, INS, DEA and BOP Update," dated April 1981, prepared by the FEDSIM.
- "Department of Justice, Justice Computer Service, ADP Environment and ADP Workload," February 1983, prepared by the FEDSIM.
- "ADP Capacity Management in DOJ," May 1984, prepared by the FEDSIM. The recommended Capacity Management Program is currently being implemented.
- "Analysis of Integrated Data Management System (IDMS) Usage and Support at the Department of Justice," completed in January 1985, prepared by Evaluation Technologies Incorporated.
- "U.S. Department of Justice Information Technology Systems Exhibits for the FY 1986 Budget Request," dated February 1985, (Exhibits 43A and 43B).

These studies are available upon request. Additionally, the CTTS validates the studies/surveys mentioned above by conducting, on a yearly basis, a customer survey which is sent to all Department of Justice (DOJ) entities requesting information about the usage of the Justice Computer Service (JCS) resources. The DOJ customers define data collection needs, software (if known), and other equipment requirements to the JCS.

The JCS personnel then use their technical expertise to identify specific ADP indicators, such as a data base size in numbers of characters required to support a Justice mission, and numbers, types and complexity of queries and transactions. CTTS then translates these ADP indicators into ADP specifications. It is this collection, documentation, and translation process that allows CTTS to translate user requirements into an appropriate combination of hardware and software needs for the Justice Data Centers.

QUESTION:

Several of the major users of the Justice Data Centers (INS, DEA, and BOP, for example) have identified current or planned computer acquisitions in this year's budget submission which would give them a computing capability at geographically dispersed sites. Please address how these plans have been incorporated into the expansion plans for the Justice Data Centers and provide specific information to illustrate the projected impact of these projects on processing capability, storage capacity, and telecommunications.

ANSWER:

There are five major techniques by which the managers of the Justice Data Centers forecast and respond to the potential impact of the organizations' changing requirements for processing capability, storage capacity, and telecommunications:

1. Justice Data Center representatives, as part of the Computer Technology and Telecommunications Staff (CTTS), review all organization's formal AIS plans and participate in the review of related AIS requests for hardware, software, and services. Participating in such efforts provides the data centers with appropriate lead time to incorporate changes in the users' processing needs or approaches into the Central Facilities Service Plan.

2. Order DOJ 2830.1C, entitled " Automated Information Systems Policies," requires the organizations which plan to use the Justice Data Centers to participate in joint planning with data center management.

3. The Justice Data Centers regularly hold users' meetings to discuss matters of mutual concern, including specific changes to workload or workflow. The requirement for the frequency of such meetings at the working level increases as organizations undertake transition from a centralized to a distributed environment.

4. CTTS publishes a common-user ADP and telecommunications facilities plan, which reflects the actual and projected processing/storage workloads of data center users, and provides for their identified growth requirements. We plan to update this document in the near future.

5. Capacity planning studies are conducted periodically. Recently a management study was conducted to improve the Department's efforts in developing an effective capacity planning program.

The aforementioned techniques have reflected a significant increase in the overall transaction processing hardware and software required both centrally and decentrally. Centrally, as distributed hardware is used, the workload increases regarding main file and indices access. The trend is to provide additional processing capability to field users, complementing large central data bases.

These five techniques are utilized in the approval process prescribed in Order DOJ 2830.1C. This process establishes the validity of a Department component's request to acquire decentralized capability. Under order DOJ 2830.1C, each major Department organization is required to implement, on a phased basis, a formal, long-range AIS planning phase, resulting in the development of strategic and tactical AIS planning documents. All major bureaus and the Justice Management Division have completed such plans, and the litigating organizations are now engaged in the AIS planning process.

The following discussion, part of a technology assessment prepared by the Justice Management Division, provides an explanation of the concept of the various levels of computing capability at (and from) geographically disbursed sites.

Automatic Data Processing Equipment

Included in this category are small, medium, and large scale central processing units (CPUs), minicomputers, and intelligent terminals (which include microcomputers, such as personal computers (PC's)).

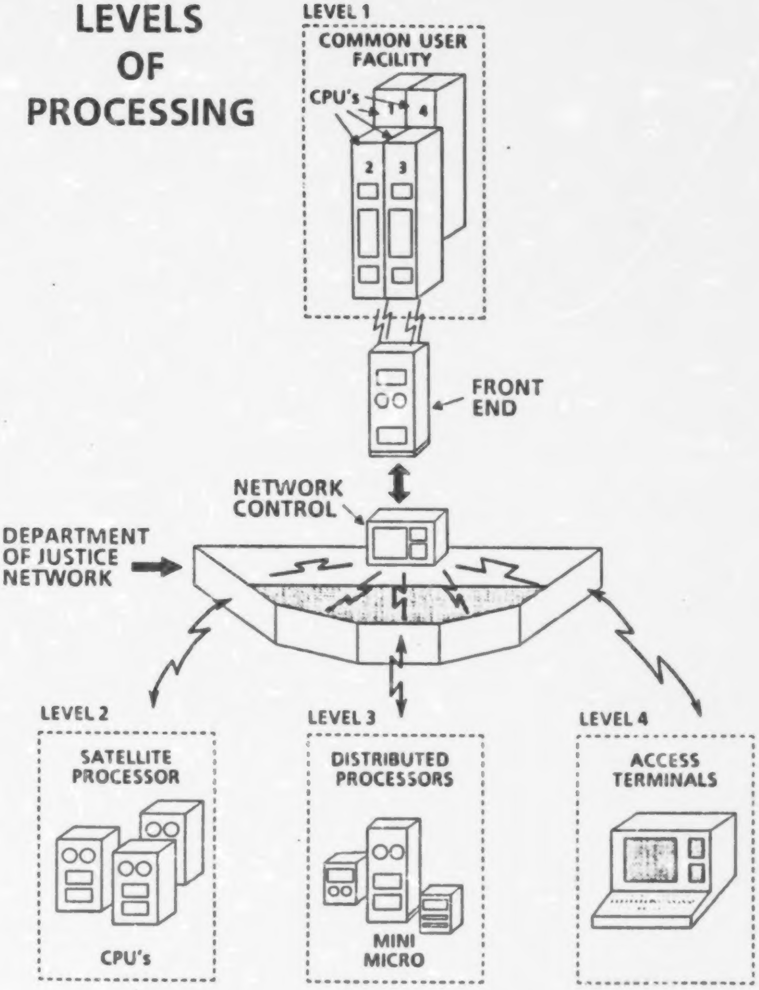
ADP equipment continues to provide increased processing speed, less cost per processing unit, and greater miniaturization of circuitry. Large scale processors, such as those now installed in the Justice Data Centers, execute approximately thirteen million instructions per second per machine. By the 1990's, equipment will be available to execute 40 to 60 million instructions per second. Decreasing hardware costs will continue as the cost of miniaturized circuitry declines on a cost performance basis.

Figure 1 illustrates four levels of processing capability, each of which can function independently and can be linked into a hierarchical network with multiple configurations. The levels are:

Level 1.	Common User Facility:	Large-scale central processing units.
Level 2.	Satellite Processors:	Medium-scale processing units, for example, the IBM 4331.
Level 3.	Distributed Processors:	Mini-computers and larger microcomputers.
Level 4.	Access Terminals:	Either intelligent or non-intelligent terminals (and microcomputers).

Manufacturers of CPU's are also concentrating their effort on the modularity of the processing units. Currently, users deal with "generations" of equipment. This involves a complete computer system replacement from an older generation to a newer one and is referred to as a "family line." The modular concept allows replacement of generations and family lines of central processing units without replacement of all the peripheral equipment associated with

LEVELS OF PROCESSING


LEVEL 1
COMMON USER FACILITY
CPU's
1
4
2
3
FRONT END
NETWORK CONTROL
DEPARTMENT OF JUSTICE NETWORK
LEVEL 2
SATELLITE PROCESSOR
CPU's
LEVEL 3
DISTRIBUTED PROCESSORS
MINI
MICRO
LEVEL 4
ACCESS TERMINALS

the entire computer system. Modularity is evident in the latest technology and will continue throughout the 1990's. Thus, users will continue to gain the advantages associated with rapid and non-disruptive capacity and technological upgrades.

One of the most dynamic impacts of technology has been in the microcomputer and intelligent terminal arena. Intelligent terminals are capable of performing processing functions themselves, hence the term "intelligent." This intelligence is reflected in a range of functions from simple data entry and retrieval to word processing/office automation work station processing. From an equipment standpoint, the use of terminals has escalated tremendously and will continue to do so throughout the next decade. Experts estimate that the ratio of terminal to employee will increase from an average of one terminal per 25 employees in 1980, to one per five employees by 1990. This massive increase is the result of greater intelligent terminal capability, the lower cost and physical size of the devices, and the potential for cost-effective increases in employee productivity.

QUESTION:

How many organizations outside the Department of Justice and its components use the Justice Data Centers? Do user growth requirements and demand for capacity include these outside users needs? Has Justice considered discontinuing service to outside users, at the expiration of their contracts, as an alternative to acquiring greater capacity? Please provide a copy of any cost-benefit studies performed on this topic.

ANSWER:

Currently there are ten organizations outside the DOJ that utilize the Justice Data Centers' facilities. The income derived from the services provided to these organizations amounts to approximately six percent of the total JCS gross income. These organizations are:

- Internal Revenue Service
- Defense Investigative Service
- General Accounting Office
- Bureau of Alcohol, Tobacco and Firearms
- Department of Navy
- Department of Treasury
- General Services Administration
- Department of Army
- Department of Labor
- Department of Health and Human Services

Outside user growth is not considered in determining the growth requirements and demand for capacity. Capacity planning and determination of processing resource requirements are based upon the workloads at peak time. The large number of interactive, on-line systems are utilized primarily by user personnel who are working daytime shifts. This creates peaks and valleys in the prime-time (8:00 a.m. to 6:00 p.m.) use of the ADP resources. While every effort is made by data center personnel to smooth the workload, it is imperative that we have sufficient capacity to insure that all Departmental users are provided with the required response time and system availability. The levels of the peaks and valleys vary, even during the prime-time shifts. Non-Departmental users and batch applications are used to smooth the time between the peaks and valleys. Providing service to outside users satisfies the Department's obligations to meet the requirements of Reform 88 initiatives and OMB Circular A-121, which require ADP resource-sharing and cross-servicing among agencies.

In addition, because of the long lead times (typically one to two years) required to define user requirements; plan acquisition of hardware, software and utilities and develop appropriate applications software; complete procurement actions; conduct testing, evaluation and remedial actions, it is necessary to be pro-active to meet Departmental needs. The CTTS uses classical workload analysis and sizing techniques to acquire sufficient ADP resources to meet user requirements for a minimum of 12 months. The supporting of critical life and property systems requires that DOJ acquire sufficient ADP resources to meet scheduled and unscheduled equipment interruptions, as well as provide for unanticipated requirements which may be mandated by Congressional or Executive decisions (i.e., the Cuban and Haitian situations). It is this detailed positive planning, designed to meet DOJ's criminal and civil justice and law enforcement missions, that makes available some ADP resources to non-Departmental users.

Customers external to the DOJ frequently benchmark their processing applications to determine the potential cost of processing at a particular center. For example, the Department of Army performed a benchmark and determined that their costs at a previous facility were increasing because of billing changes, and not because of workload increases. Thus, they decided to process at the JDC.

By allowing outside organizations to make use of the JDC's available capacity, all customers benefit since a larger customer base shares the same costs, thus keeping individual costs down.

QUESTION:

The General Accounting Office has just released a report ("Effective Management of Computer Leasing Needed to Reduce Government Costs", GAO/IMTEC-85-3) which says that Federal data processing agencies are missing substantial potential savings on leased computer equipment because managers are not analyzing their computer leases routinely and acting to reduce the costs of their leases. The Department is asking for more than $80 million to lease computer hardware in FY 1986. Please provide details on what computer hardware the Department is leasing, how long the Department plans on retaining it, and what specific steps the Department has taken to ensure that the continual leasing of this equipment is in the best interest of the Government. Be specific in describing what routine economic analysis procedures the Department uses in deciding to renew computer leases.

ANSWER:

In the course of analyzing the lease costs projected for the Department's computer hardware in FY 1986, an error was detected. The actual projected lease cost for FY 1986 is approximately $67 million. An updated 43A reflecting this modification will be prepared and transmitted.

The $67,324,000 for the lease of equipment is attributable primarily to the leasing costs projected for the Federal Bureau of Investigation (FBI), and for the Department's Working Capital Fund (WCF).

The FBI has projected leasing costs of $22,150,000 for the rental of the FBI Computer Center hardware, commercial telephone equipment, and telecommunications equipment. The WCF estimate of $23,461,000 is for the lease of data center hardware, JURIS terminals, telephone, and telecommunications equipment. Other significant leasing costs include $6,024,000 for the Drug Enforcement Administration, $4,951,000 for the Civil Division, and $4,417,000 for the U.S. Attorneys.

The Department has standard procedures for the acquisition of hardware to ensure that the method of acquisition is appropriate and in the best interests of the Department. For example, depending on the nature of the equipment, and such factors as the rate of the advancing technology and the utility of the equipment to the Department, a life cycle for new equipment is determined. As the end of the life cycle of the equipment approaches, organizations must plan for its recompetition and/or eventual replacement to ensure that potentially obsolete hardware is replaced on a timely basis.

In addition, at the time of acquisition, cost comparison analyses are developed for all equipment acquired by the Department. When we procure equipment, we request that the vendors propose alternate pricing schemes such as purchase vs. lease options, or lease, with option-to-buy, and make their bids according to the projected life cycle of the equipment. Based on further analyses, the option that is in the best interest of the Government is selected. Often, it is difficult to determine, before the contract negotiations occur, which option will be best for the organization. In many cases, contract negotiations could result in a lower price through purchase, than the previously anticipated leasing costs.

Information Technology Exhibit

QUESTION:

The Department's "Information Technology Systems Exhibits for the Fiscal Year 1986 Budget Request" shows a 1985 obligation of $2.47 million for data center enhancements in Washington and Dallas but does not describe the enhancements or delineate what work is being done at each center. Please describe the specific enhancements and for which center they are intended.

ANSWER:

In FY 1985, the Department of Justice requested enhancements in the amount of $2,470,000 for the data centers in Washington, D.C., and Dallas, Texas. Specifically, $870,000 was requested to support an environmental upgrade for the Washington, D.C., center. This enhancement provides appropriate air conditioning, and electrical system upgrades necessary to support additional equipment. Automated monitoring techniques, such as an automated alarm system, will be installed. Such a system will alert the operational staff to air conditioning problems or water leaks which could terminate operations at the Center quickly. Also included is the physical expansion of the computer area to allow for the housing of additional computer output equipment such as laser printers and graphics plotters currently not readily accessible due to lack of contiguous space. Additionally, design and construction deficiencies will be corrected to prevent the disruption of operations.

An additional data processing facility was established in Dallas, Texas, in May 1984, to meet the increased demand for data processing capacity and to provide back-up capability in the event of a failure in the Washington, D.C., facility. An amount of $1,600,000 was requested to begin the renovation of space in the Government-owned Terminal Annex Building to house the Data Center, which is presently located in temporary quarters of a privately-owned building. The requested funding will allow for architectural design and engineering studies as preliminary steps to the development of the new facility.

QUESTION:

The Department is asking for an increase of $3.2 million dollars (61 percent) over 1985 levels for the Dallas Data Center. Please provide a detailed description of the enhancements to be provided with this funding and the requirements the enhancements will support.

ANSWER:

Facility enhancements are reflected only in the first entry on the 43B exhibit, item: Data Centers Enhancement (Washington and Dallas). The FY 1986 projection is for $2.5 million and was described in the previous question.

The $3.2 million increase in the 43.B item, Justice Data Center-Dallas, has been revised. The latest figure for FY 1986 should be $5.8 million, an increase of $.8 million from FY 1985. The "description" shown on the 43B for this item should be expanded to state that the figure represents operating costs (equipment, supplies, SLUC, leases, and salaries).

QUESTION:

Last year the Department of Justice requested funding for a consolidated departmental telecommunications network. In making that request the Department stated that its components were maintaining a number of separate redundant networks and that the costs of these networks were escalating rapidly. Since funding was not provided ultimately for the consolidation project last year and is not being requested this year, please provide the Subcommittee an assessment of the Department's overall telecommunications environment and describe any specific initiatives by the Department to reduce its telecommunications costs. Please detail the Department's overall policies governing the maintenance and expansion of telecommunications networks.

ANSWER:

There are two major aspects of telecommunications, data and voice, which are of great concern to the Department at this time. The telecommunications initiative referred to in your question is associated with combining non-classified data networks into a single network environment. Currently, the Department is characterized by independent, private, leased lines and public value-added networks. A new study on optimizing the Department's data communications environment may be conducted in 1987. Until the results of this study are known, the Department will restructure and optimize the existing networks in order to fulfill partially critical operational support needs and offset uncontrollable tariff increases.

Additionally, the Department will devote its limited resources to the requirement for increased voice communications management as a result of divestiture and deregulation. Current initiatives include: planning and participating in the Federal Telecommunications System (FTS) replacement effort of the General Services Administration (GSA); the Washington Interagency Telecommunications Systems (WITS) acquisition sponsored by GSA; the replacement of antiquated field Private Branch Exchanges (PBX's) where service cannot be provided by GSA; and the competitive acquisition of voice terminals (telephones) in support of the above initiatives.

Regarding policy, the Department requires central approval of all telecommunications initiatives. Networking plans are reviewed in light of meeting operational needs at the least cost to the Government and preserving competition. Guidelines have been issued, for example, governing the acquisition of PBX's. These guidelines reflect the Department's policy of compatible solutions to voice and data needs and the evolution towards the merging of these two technologies.

QUESTIONS:

Last year the committee questioned whether the Department had experienced any ADP system failures that affected operations and required additional funding to correct. The Department responded that records of such failures were not maintained; is this still the case? Has the Department experienced any major systems failures since last year? What portion of the current budget request for ADP and telecommunications is earmarked for correcting known system deficiencies, as opposed to enhancing ADP capability?

Describe any problems and the estimated cost for corrections at either the Washington or Dallas centers.

ANSWER:

We are unable to determine the source of the statement, that "records of such failures were not maintained." The Department has maintained records of all ADP system failures that occurred at both the Justice Data Center-Washington (JDC-W) and the Justice Data Center-Dallas (JDC-D). All failures of the environmental support systems are recorded and the times and extent of the outages are documented. These records are reviewed to determine the effectiveness of maintenance and service calls, as well as to analyze system deficiencies. An hourly terminal downtime cost has been established to place a dollar value on outages of the ADP systems. Records are also maintained concerning the availability of the major online systems that serve the Department.

Regarding major outages, on January 21, 1985, an air conditioning failure caused the JDC-W to be totally shut down. Due to equipment damage caused by excessive heat, major online applications were out of service for a minimum of 7-1/2 hours to a maximum of 16 hours. Batch processing was unavailable for 19 hours.

On November 23, 1984, the JDC-D had a site outage that lasted for 7-1/2 hours. This was caused by a loose fuse clip, resulting in blown fuses and the loss of air conditioning in the mechanical room. This in turn, caused the computer equipment to shut off.

On February 13, 1985, the JDC-D had a site outage that lasted for 7 hours. This was caused by a leak under the floor in a cold water supply line to air conditioning equipment. The two JDC-D outages were apparently caused by construction deficiencies and are not a continuing problem.

None of the funds in the FY 1986 budget are earmarked for correcting known system deficiencies as Working Capital Funds are already available for this purpose. No additional appropriated funds are required to correct known system deficiencies.

QUESTION:

The Assistant Attorney General for Administration, who heads the Justice Management Division (JMD), is the Department's senior official for information resources management. Accordingly, the Justice Management Division is charged with developing Departmentwide ADP and telecommunications policy and approving the long range ADP plans and budgets of the various Justice components. JMD also delivers data processing services to various components by operating Justice's two central data processing facilities. The co-location of the policy and budget approval functions with JMD's service function creates an inherent conflict for decisionmakers. How does the Department reconcile the conflict inherent in co-locating its policymaking and component budget approval functions with JMD's service delivery responsibilities? Please provide examples of any specific conflicts that have occurred in the past between JMD and Justice components and describe how these conflicts have been resolved. Please assess for the Subcommittee the advantages and disadvantages of separating information resource management and central computer service functions within the Department.

ANSWER:

The Paperwork Reduction Act of 1980 (P.L. 96-511) requires that the senior official for information resources management (IRM) shall be designated by the head of each agency from among those officials who report directly to the head. The Code of Federal Regulations (28 CFR, Subpart O) has long assigned to the Assistant Attorney General for Administration broad responsibility for all elements of IRM. Therefore, in response to OMB's implementing Bulletin, No. 81-21 of June 8, 1981, the Deputy Attorney General designated the Assistant Attorney General for Administration as the senior official under §3506 (b).

The policy and budget approval functions are not co-located with the Justice Management Division (JMD) data processing source function except insofar as they are each organizationally within the JMD. The following comments illustrate this point:

1. The Department's Budget Staff and its Systems Policy Staff are separately headed by a Senior Executive Service employee. Both staffs are funded through Congressional appropriations. The Computer Technology and Telecommunications Staff (CTTS), the parent organization of the two Justice Data Centers, is funded entirely through the Working Capital Fund. (CTTS is also headed by a Senior Executive Service employee.)

2. Because of this separate funding, the budget and policy staffs have no vested interest in the reimbursements which constitute the Working Capital Fund. There are no instances in which budget/policy decisionmakers have met with an "inherent conflict" vis-a-vis the data center service functions. To the contrary, the budget/policy components have, in certain instances, supported an organization's requests for data processing decentralization, when such a request appears to be in the best interest of the Government. The Automated Information Systems (AIS) Planning Methodology, which provides related guidance to the offices, boards, divisions and bureaus, states that the Department's central facilities are to be considered as one of many possible technical alternatives/solutions to an organization's AIS requirements. Neither the Department components nor the Systems Policy Staff are bound to accept the recommendations of the service level managers.

3. OMB Circular A-123 requires the annual development of an inventory of programs and functions together with related vulnerability assessments. OMB's implementing documents recognize that the competence and integrity of employees is the single largest deterrent to waste, fraud, abuse, and unethical behavior. Thus, it is the quality of the employee and not organizational placement that is the key element to appropriate decisionmaking.

4. Reviews of various JMD functions are conducted at levels higher than staff, both within and external to the Department. For example, budgets and related issues are reviewed, prior to Congressional submission, not only by the assigned analysts within the budget/policy staffs, but also by their staff directors, the Budget Review Committee, (which includes the Deputy Attorney General, the Associate Attorney General, and the Assistant Attorney General for Administration), and officials at the Office of Management and Budget.

The above observations notwithstanding, the subcommittee has asked that we assess the advantages and disadvantages of separating information resource management from the central computer service functions within the Department. The one clear advantage, of course, is that such a separation would render void even an appearance of a conflict of interest between the two functions. However, we believe that the advantage of such organizational separation would be outweighed by its disadvantages. For example:

1. Management experience, knowledge, and expertise, which now inform/direct both the IRM and computer service functions, would be severed. Additional, parallel management would be required.

2. The Justice Data Center(s) would have to depend entirely on its applications users to relay their anticipated needs. There would be no informal method of checks and balances to determine that plans delineated by a data center user were in fact, reflected in the user's organizational budget proposals. (For example, when the Systems Policy Staff first reviewed the proposals of one of the data center user organizations, a staff member handed a photocopy of the projected disk drive requirements to a data center manager who could then confirm that the required disk drives would be available.)

3. It is organizationally logical to include data center functions under the umbrella of the IRM program. For example, 41 CFR, ch. 201, Federal Information Resources Management Regulation (see Federal Register of January 30, 1985) clearly incorporates data processing facilities. Similarly, a draft OMB circular, entitled "Management of Federal Information Resources," states that the term "information resources management" encompasses both information itself and the related resources such as personnel, equipment, funds, and technology.

QUESTION:

In the Department's "Information Technology Systems Exhibits for the Fiscal Year 1986 Budget Request", the "Departmentwide" exhibit lists total obligations and workyears as follows:

	FY 1984 Actuals	FY 1985 Anticipated	FY 1986 Estimated
Total obligations	$336,510,200	$445,315,900	$386,988,700
Workyears	1,175.6	1,379.5	1,408.0

The exhibits include individual itemizations for the Bureau of Prisons, Drug Enforcement Administration, Federal Bureau of Investigation, Immigration and Naturalization Service, Civil Division, U.S. Attorneys, and Working Capital Fund. The calculated total of obligations and workyears for these individual listings is as follows:

	FY 1984 Actuals	FY 1985 Anticipated	FY 1986 Estimated
Total obligations	$299,219,000	$402,069,000	$340,405,000
Workyears	1,579	1,701	1,680

The "Departmentwide" total workyears, on the other hand, are lower than the calculated totals. The difference is as follows:

	FY 1984 Actuals	FY 1985 Anticipated	FY 1986 Estimated
Workyears	403.4	321.5	272.0

Please explain these discrepancies. What accounts for the differences in obligations? Please be specific. Why are the "Departmentwide" workyears significantly lower than the sum of the parts?

ANSWER:

Regarding the discrepancies in workyears and obligations in the Department's "Information Technology Systems Exhibits for the FY 1986 Budget Request," (February 1985) we would like to note that this is the first year to automate this effort fully. Your observations are correct regarding the discrepancies, and we are currently in the process of debugging the system and correcting exhibits. The workyears within the Working Capital Fund exhibit were entered into the system inadvertently as negative numbers. Additionally, the total workyears for the Bureau of Prisons for FY 1986 are 60, not 75, as shown on the second page of the exhibit. The corrected Department-wide total workyears are:

FY 1984 Actuals	FY 1985 Anticipated	FY 1986 Estimated
1,745.6	1,917.5	1,932.0

The difference in obligations that you noted is attributable to the "All-other" category (those small organizations for which a 43A exhibit was not included in the Congressional package). The following organizations comprise the "All-other" category: the Federal Prisons Industries, the Parole Commission, the Executive Office for Immigration Review, the Financial Management Information System, the Criminal Division, the Civil Rights Division, the Tax Division, the Land and Natural Resources Division, the Community Relations Service, the Office of Justice Programs, the Executive Office for United States Trustees, and the U.S. Marshals Service.

QUESTION:

The Department justified the installation of the Justice Data Center in Dallas, in large part, as a back-up facility to the Justice Data Center - Washington. Which Washington center users have identified critical applications requiring back-up capability at Dallas? What applications are being backed up currently at the Dallas Center and what additional applications are planned for Dallas back-up? Please outline the procedures for using the Dallas center as a back-up site and specifically address how the continuity of critical Justice applications will be assured.

ANSWER:

Both the Justice Data Center-Washington (JDC-W) and the Justice Data Center-Dallas (JDC-D), in varying degrees, support management, administrative, litigation, immigration, law enforcement, penal, and custodial activities. The security requirements of the application systems supported by the JDC's are directly related to the individual application systems, and the information processed and stored by and for those application systems. All JDC users have been surveyed to categorize the level of sensitivity applicable to their systems as "nonsensitive," "sensitive," or "sensitive needing additional protection."

Several JDC users, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Land and Natural Resources

Division, the Criminal Division, the Justice Management Division's Litigation Systems Staff, and INTERPOL have identified a need for special security measures.

The Justice Management Division has recently entered into a contract to identify various types of procedures and mechanisms, including associated costs, necessary to assure the security and integrity of user-defined sensitive information processed at the JDC's. While not the primary purpose of the contract, the results will be used in identifying application system back-up priorities.

The JDC-D is currently available to process a limited number of critical applications. All batch applications are currently being reviewed; for example, payroll/personnel will be backed up in Dallas. Discussions have been held with many Justice Computer Service (JCS) customers and users are in the process of identifying those applications which can be backed up cost-effectively at the contingent site. Many users are interested in using the JDC-D as an alternate processing facility.

The current tendency of users is to move an application system from one site to another during an emergency, rather than commit to the expenses associated with redundant processing. At a December 12, 1984, meeting of the JCS users, users were informed of the attributes of the processing resources available at the JDC-D. The JDC-D was designed and built as a duplicate (albeit smaller) version of the JDC-W.

The operating and technical procedures at the JDC-D were designed in the same manner. Therefore, if a job can process successfully at the JDC-W, it could also process successfully at the JDC-D. This has been demonstrated by the Immigration and Naturalization Service in their relatively easy move of several applications from the JDC-W to the JDC-D.

To simplify matters, the procedures for installing an application at the JDC-D are the same as the JDC-W. A request, directed to the Computer Technology and Telecommunications Staff, outlining the processing requirements, hardware and software needs and teleprocessing requirements, is all that is necessary to begin the process.

Immigration and Naturalization Services

QUESTION:

INS has significantly expanded its use of information technology during the past few years. Since FY 1982 INS' information technology budget has increased 205 percent to the current requested funding level of $66.5 million. What impact has information technology had on the economy of INS operations? Has INS studied and documented savings resulting from expenditures for information technology? Provide copies of studies/reports that illustrate economies and/or efficiencies resulting from INS' substantial investment in information technology.

ANSWER:

Since 1982 INS has made significant progress in facilitating operations through the use of information technology. Improvements have been realized across a broad spectrum. Among these are the recompetition of the Immigration Card Facility (ICF) which has reduced the cost of producing the secure alien identification cards (I-551 and I-586's) from $3.75 per card to $2.30 per card. The facility produces in excess of 1,000,000 cards per year resulting in a savings of $1,450,000. The Immigrant Data Collection facility (IMDAC) was established which consolidated redundant data entry and collection for visa data capture, identification card production and statistical reporting into a single data entry and file creation facility. A new Non-immigrant Information System (NIIS) has been implemented and through its improved processing operates with no backlog as opposed to a backlog of as many as 30,000,000 non-immigrant arrival and departure documents associated with the previous system. Data capture has been improved reducing the data collection and entry into the data base to 13 days. An interim Naturalization casework system was implemented and is currently being replaced by a permanent Naturalization Casework System (NACS). Together they currently serve eight district offices. Indicative of the improvements resulting from the use of this system is the recent naturalization of 9,000 petitioners in a single day in our Miami District. The system includes automated tracking, receipting, scheduling and call-in letters. A new Deportable Alien Control System serves four District Offices and six Service Processing Centers providing automated booking, tracking and statistical reporting.

These and other improvements have allowed a 15% reduction in Central Office Information Systems personnel in the records area. Our development and implementation efforts are continuing toward the development of an overall integrated information systems environment based on a Central Index at its heart and with other systems scheduled for near term development and/or implementation such as Adjudications Case Tracking, Computer Assisted Detention and Reporting Systems, the Alien Files Accountability and Control System and others.

QUESTION:

In its budget submission INS states that "the overall office automation effort in INS (i.e., the INS Long Range Plan) continued at an accelerated pace during FY 1984. This was made possible by the redirection of the planned hardware/software acquisition process". Has INS also modified its long range ADP plan? Provide a copy of the most current long range plan and any available updates.

ANSWER:

The early award of the software development contract in November 1983, permitted numerous developmental efforts to begin in FY 1984. Additionally, the agreement with the Department of Justice for the establishment of the Dallas Data Center permitted the expansion of these new systems Servicewide. These changes to the Long Range Plan are documented in the "Immigration and Naturalization Service 1985 Status of Long Range ADP Plans".

This document is currently undergoing a review by INS management and should at this time be considered draft. Though this document is not a strategic ADP plan it does provide information concerning agency progress since the development of the 1981 ADP Plan, a description of planned support systems, the overall hardware architecture and a general implementation schedule.

In addition the Service is currently undertaking a thorough review of its ADP requirements in connection with the development of a new strategic information systems plan. The plan should be completed by September 1985.

QUESTION:

In its FY 1986 budget submission INS refers to a recently awarded major equipment acquisition and facilities management contract. Please identify the contractor, the specific deliverables under this contract, and all current and future costs associated with this contract. What impact will the installation of hardware under this contract have on the Service's telecommunications needs and has this impact been factored into the contract?

ANSWER:

Contractor -- On January 10, 1985, the INS ADP Hardware Acquisition was divided and awarded to the following contractors:

a) IBM Federal Systems Division
b) Electronic Data Systems Federal Corporation
c) Planning Research Corporation

The function and responsibilities of each contractor are described in their contractual Statement of Work (Section F), copies attached.

Current and Future Costs - Pursuant to an agreement with the Department of Justice, INS will expend no more than $64,425,989 over the life of the contract. See the attached INFORMATION MEMORANDUM, dated 1-15-85, concerning the INS ACQII Equipment Acquisition.

Network Impact - The increased number of terminals and the proposed change in network architecture resulting form the implementation of the equipment acquisiton contract will require modifications to the existing data communications contract. These changes will included in the INS ADP Long Range Plan.

Hardware to be Delivered - During the life of the contract, INS plans to install approximately 8,500 terminals, 260 terminal controllers, 70 office automation processors, and 8 small main-frame computers.

IBM FEDERAL SYSTEMS DIVISION

STATEMENT OF WORK

Contract No. COW-4-90170

This Statement of Work identifies and describes the tasks the contractor will be required to provide throughout the contract period. Task orders will be issued in accordance with Article E.19 of the Schedule and as required and ordered under funded tasks orders, the contractor will provide the following:

- Overall system architecture, software, hardware, and communications engineering and integration definition and planning.
- Overall hardware and software capability assessment and planning.
- High-Level consultation on overall systems management approaches and methodologies.
- Overall systems engineering and integration including but not limited to system configuration management and system workload analysis.

ELECTRONIC DATA SYSTEMS FEDERAL CORPORATION

Statement of Work
Section F

F.1 This Statement of Work identifies and describes the tasks the contractor may be required to provide throughout the contract period. Task orders will be issued in accordance with Article E.19 of the Schedule and will relate to the following:

- Project Management
- Systems Engineering and Integration
- Training
- Documentation
- Software

F.2 Project Management

This task shall include management and control of all activities relating to site planning and hardware installation, systems engineering and integration and training. It shall include assessment of all required personnel and material resources and direction of all efforts within the defined individual task orders.

The COTR will provide guidance to ensure that progress is not hampered by the task integration in the overall project plans and requirements. The COTR will review and approve/disapprove all submittals within the milestone schedule set forth in each task plan.

F.3 Systems Engineering and Integration

This task shall include the full range of SE&I services to permit effective and efficient utilization of the ADPE and office automation equipment, including but not limited to:

F.3.1 preparation of an SE&I Master Plan which will delineate the full range of SE&I services and the organization for providing these services. This plan will also address common and essential protocols, standards and other system controls and guidance.

F.3.2 preparation of a Master Site Plan which will provide the overall guidance, policies, and coordination procedures necessary for proper control of design, preparation, and installation of equipment in all sites.

F.3.3 site evaluation, preparation and installation, as required, of sites which are to receive equipment.

F.3.4 equipment acquisition and maintenance services for all sites as required

F.3.5 preparation of an Inspection, Verification and Validation Plan which will define and describe the SE&I functions and related procedures as they pertain to the project.

F.3.6 preparation of a Configuration Management Plan and implementation of the policies, procedures and plan for configuration management.

F.3.7 acquisition of the IDMS data base management system and under the guidance of the COTR, coordination of the installation of the system at specified sites.

F.3.8 systems analysis in support of the above.

F.4 Training

This task will require the Contractor to develop a training plan, develop course materials and implement training for INS users as required.

F.5 Documentation

This task will provide for submittal of standard documentation as issued with hardware and software. The Contractor will provide assistance in obtaining additional copies or additional documentation as required.

F.6 Software

The Contractor will be required to acquire and deliver operating system and related software and provide assistance in obtaining any additional software as required.

PLANNING RESEARCH CORPORATION

Statement of Work
Section F

1. INTRODUCTION

This Statement of Work (SOW) delineates and identifies the tasks to be performed by the contractor throughout the contract life in accordance with the terms and conditions herein. (See Article E. 19)

2. FACILITIES OPERATIONS SUPPORT (FOS)

The contractor shall provide as set forth below:

2.1 Management and Planning

Manage and operate computer operations at the Central Office and other selected sites. Develop the FOS Master Plan which will describe the FOS organization, functions and responsibilities for management, planning, operation, technical support, system software support, security, and maintenance coordination at all sites.

2.2 Help Desk/Technical Support

2.2.1 Provide at selected sites, the technical and professional support necessary to ensure daily system performance at all INS sites.

2.2.2 Develop User's Guide with quarterly upgrades.

2.2.3 Support users and INS site coordinators in resolution of problems and discrepancies and deliver problem logs and problem statistical reports.

2.3 Security

- With INS direction, develop and conduct a Risk Management Program
- Establish Procedures for Catastrophic Events Recovery
- Assure Operating Procedure Integrity
- Perform Software and Site Audits
- Provide Password and Access Controls
- Assist User Group ~~and~~ with Security Problems

2.4 Maintenance Coordination

In accordance with the FOS Master Plan, coordinate all maintenance services and provide malfunction reports. This activity will be planned in conjunction with Task 2.2.

2.5 INS - System Software Support

2.5.1 Provide the necessary technical and professional support to generate and maintain the various system software packages (e.g., MVS, IBM Utilities, System 36 SSP, 3705 OS and other communication software, etc.), load test, and implement SE&I directed tuning/balance modification.

2.5.2 Perform tasks necessary to install IDMS at selected sites, and to ensure its integration with other system software.

2.5.3 Perform software modification to convert programs to run under new operating systems.

2.5.4 Perform all system software installation and upgrades at all manned and unmanned sites.

2.5.5 Make available systems analysis, telecommunication, planning support, and conversion related program modification support.

2.6 Computer Operation

Perform, but not necessarily be limited to, the following tasks:

- System Load Balancing
- Data Distribution
- Fault Isolation & Correction
- Job Accounting
- Production Scheduling
- DASD Management
- Tape Management
- Communication Support
- System Utilization Monitoring and Reporting
- Data Base Saves
- Remote Operation Support to Unmanned Sites
- Procedure Development for Computer Operation at Unmanned Sites

Memorandum

Subject

Immigration and Naturalization Service
ACQII Equipment Acquisition
--INFORMATION MEMORANDUM

Date

JAN 15 1985

To

John W. Murray
Associate Commissioner
Information Systems
Immigration and Naturalization
Service

From

Frank A. Guglielmo
Acting Director
Computer Technology and
Telecommunications Staff
Office of Information Technology
Justice Management Division

This memorandum confirms your verbal commitment of January 7, 1985, that the subject acquisition will not exceed the spending ceiling of $64,425,989. This amount was approved by Kevin D. Rooney, Assistant Attorney General for Administration on October 5, 1983, as part of the overall approved Automated Information Systems (AIS) request AIS 3-255. It is the same amount for which we have a Delegation of Procurement Authority (DPA), dated December 23, 1983, from the General Services Administration.

This DPA was based on the information and certification we provided in our Agency Procurement Request (APR) of August 8, 1983, which specified that the $64,425,989 would be spent as follows:

$56,074,000	Equipment Purchase Price and Operating System Software
$ 6,412,000	Maintenance
$ 1,939,000	Facilities Management

(Total estimate, predicated on purchase, amounted to $64,425,000 over the eight (8) year life cycle.)

This memorandum also addresses the Engineering Changes permitted under the E-12 clause of the contract. Any expansion, upgrade, or other modification that the Immigration and Naturalization Service proposes to make to this contract, through the use of the Engineering Change clause, must first be approved by the Justice Management Division staffs through the AIS process.

If you have questions, I can be reached on 633-1600.

QUESTION:

INS states that it desires to establish an integrated systems approach. However, the budget submission describes 14 separate existing systems targeted for some form of enhancement. What document best describes each INS system, how it relates to other systems, and how these systems are to be integrated? Please provide a copy.

ANSWER:

The development of separate systems does not conflict with an integrated systems approach. INS systems are being developed using a common data base management system which permits inter-system communication. The overall integration of these systems is being accommodated by the Central Index System which in scheduled to be implemented by July 1985. This index system serves as a pointer to other systems which provide detail information on a particular application or case. System users are able to transfer between systems by function keys. Such an approach permits independent development efforts to proceed concurrently.

QUESTION:

INS' Adjudications Casework System (ACS) will provide across-the-board support to adjudications field staff in processing applications for benefits. The system is to afford nationwide access to the ACS data base through a network of user terminals across the country. What impact will the installation of this system have on the Dallas Data Center? What impact will it have on INS' existing telecommunications network? Assuming additional hardware and software will be required, what will be the cost of this project, including telecommunications?

ANSWER:

The Adjudication Casework System (ACS) is intended to support field office processing of applications and petitions for benefits under the Immigration and Nationality Act. The initial system will be installed in one office on a pilot basis late in October 1985. The system will provide automated file searching and transfer through links to the INS Central Index, case tracking and status inquiry support, automated printing of forms and case management information. The initial phase will include eight of the highest volume applications and petitions. Once the pilot system is operating smoothly and any adjustment made it will be expanded to other INS offices and also to other types of applications and petitions.

The first district office will be supported by the Dallas Data Center. Subsequent district offices will also be supported by INS regional mainframes. This determination will be made dependent upon expansion of the Dallas Data Center and the resultant cost/benefit tradeoffs between use of Departmental and INS computing capabilities.

The INS data communications network (INSINC) currently has the capacity to accommodate the initial ACS sites.

The anticipated cost of this project over a four year period is provided below:

Adjudications Casework System Costs	(In thousands of dollars) FY 1984	FY 1984	FY 1984	FY 1984
Software and Operations	$86	$818	$1,500	$1,300
Hardware	...	140	450	450
Telecommunications	...	100	300	600
Total	86	1,058	2,250	2,350

QUESTION:

INS' Nonimmigrant Information System (NIIS) is described as an automated system designed to provide INS and other Government enforcement agencies with arrival and departure information on nonimmigrant visitors. Its data base contains over 26 million online records. Postings to update that data base take about 13 days from receipt of arrival/departure information.

Given the size of the data base, the large number of transactions, and the lag time to update the data base, is this the most efficient/effective system for tracking nonimmigrant status? How frequently is this system used and by what agencies? Provide documentation to support your response.

ANSWER:

The Non-Immigrant Information System (NIIS) was designed to provide INS and other agencies with up-to-date, complete and accurate information on arrival and departure of the various classes on non-immigrant visitors. At this point in time, over 41.5 million transactions have been processed into the data base which currently contains more than 23 million records. It is true that most arrivals and departures are posted to the data base within two weeks of the arrival/departure date. We do believe this is an efficient system for tracking nonimmigrants although we are constantly seeking ways to streamline and otherwise improve the system. The data base is accessible to more than 500 terminals within the INS and is used 7 days per week, 23.5 hours per day to support mission-related functions. Approximately 14 requests for special reports have been received from other agencies. Recurring reports are provided quarterly to the Department of Commerce and the U.S. Travel and Tourism Administration; monthly to the Department of State; and bi-weekly to the FBI. In addition, the FBI and INTERPOL have dial-up terminal access to the data base.

QUESTION:

INS' FY 1986 budget submission shows costs of over $21.5 million for the operation of INS' data communication network (INSINC). Is any portion of the telecommunications equipment and/or services funded through other projects such as the Adjudications Casework System? If so, please provide the subcommittee a breakdown of all INS telecommunications costs and identify where, within the budget, they are contained.

ANSWER:

Actually INS' budget reflects $3.5 million for the operation of the INS data communications network INSINC. All telecommunication costs as they relate to and are in support of each INS system are consolidated into the single line item pertaining to that system.

QUESTION:

In its FY 1986 budget submission INS notes that currently its files are accessed by three states as part of the service's Systematic Alien Verification for Entitlements (SAVE) project using INSINC, the INS telecommunications network. Please provide copies of any studies showing the projected telecommunications traffic and systems impact and costs associated with adding additional states to this project. What benefit does the Service perceive from adding states to the project and what efforts are underway to do so?

ANSWER:

The Service has not conducted a formal study to project telecommunications traffic directly related to the SAVE prject or resulting benefits realized by states because of remote terminal access to the system.

The Alien Status Verification Index is not a separate database. A masque was developed of select data elements from the existing Master Index Remote Access (MIRAC) System and a special transaction code developed for accessing that masque of data. The impact to that system is limited solely to the number of transactions generated by the remote terminal on-line inquiry capability provided. Because of the sophistication and extensiveness of the INS telecommunications network, response time to date has not been affected. However, the Service anticipates expanding to additional states in the near future.

The Service will not realize a financial benefit from implementation of SAVE in numerous states. It will, however, receive functional benefit through removing the incentives which draw illegal traffic to our borders. It is evident that increased staffing at the border is not enough to stop illegal immigration. Although increased resources lead to increased apprehensions, they do not stop the flow and another tactic is needed. The SAVE Program meets that need. A major incentive to illegal entry are benefits. Through Project SAVE, the Service will be able to assist in removing the major pull factor that draws illegal immigration to our shores and depletes resources available for those who are entitled legally.

Civil Division

QUESTION:

The Civil Division rapidly expanded its use of information technology during the past five years. Expenditures have increased from $2.1 million in FY 1982 to over $28 million proposed for FY 1986--over a 1,200 percent increase.

Has the Civil Division studied the impact of its expenditures on its operations?

Please provide documentation (i.e., copies of applicable studies) to support your answers.

ANSWER:

Since the inception of our information technology program, the Civil Division has monitored system impacts as they relate to operating costs, attorney productivity and program effectiveness. In addition to the annual assessments of benefits and future program requirements which are made as part of the annual budget development process, the following specific system studies have been performed:

- ° Analysis of the adequacy of the IBM System/34 computer to support the Civil Division's Case Tracking System, 4/15/80
- ° Analysis of the need for upgrading the System/34 computer to support the Division's Case Tracking System, 6/12/80
- ° Evaluation of the word processing capabilities within the Civil Division, 9/24/80
- ° Assessment of a computerized legal research system for the Civil Division, 1/15/81
- ° Assessment of the integration of computer and word processing systems in the Civil Division, 4/28/81
- ° Comparison of information processing in five Justice Department litigating divisions, 7/81
- ° Development plans for Civil Division's Case Management System, 8/25/81
- ° Assessment of 1982 and 1983 savings from word processing acquisitions in the Civil Division, 1/4/82
- ° Plan to automate and integrate word processing and data processing within Civil Division offices, 2/5/82
- ° Assessment of the costs and benefits of providing Automated Litigation Support for asbestos, Agent Orange, radiation and student loan fraud litigation, 3/18/82
- ° Assessment of the feasibility of conducting an information and data processing planning session for an integrated automation system, 3/26/82
- ° Report on the need for upgrading the Civil Division's Case Management System, 9/1/82
- ° Study of the operational requirements of the upgraded automated Case Management System 10/22/82
- ° Analysis and plan for meeting the Civil Division's space, facilities, communications and office automation needs, including a review of space plans in private law firms, 10/82
- ° Application of an automated litigation support plan for the Civil Division, 12/13/82
- ° Automated Information System Plan - 1983, 1/13/83

- Analysis of the functional requirements for the Case Management System, 3/14/83
- Evaluation of AMICUS pilot project, 6/20/83
- Evaluation of Automated Litigation Support programs, 9/23/83
- Automated Information System Plan - 1984, 9/15/83
- 1984 Automated Litigation Support Plan for the Civil Division, 10/17/83
- Analysis of the Automated Records Management System for the Civil Division, 10/17/83
- Analysis of lease vs. purchase of the Division's IBM, Wang and Lexitron equipment, 2/6/84
- Preliminary cost benefit analysis of a new Records Management System in the Civil Division, 3/12/84
- Evaluation of AMICUS, 3/14/84
- Preliminary analysis of the economics of litigation support in the Civil Division, 4/30/84
- Automated Litigation Support Program status report and FY 1985 plan, 10/26/84
- Automated Information System Plan - 1985, 2/22/85
- Proposal and preliminary findings for an Automated Litigation Support cost/benefit analysis, 3/85
- Study of AMICUS Benefits, 4/10/85

All of these studies have been made available to the General Accounting Office as a part of its on-going Management Review of the Department. Although they are too voluminous to attach here, we would be happy to provide copies of any studies the Subcommitte wishes to examine.

QUESTION:

What efficiencies and/or economies have resulted?

ANSWER:

Beginning in 1981, the Civil Division has pursued an information technology program designed to improve attorney productivity and the operating efficiency of our litigating units. Since that time, we have witnessed dramatic improvements in the efficiency and effectiveness of our resources. At the beginning of 1981, 328 attornyes handled a caseload of 19,165 cases. The average Civil Division attorney personally handled 24 cases a year and assisted the United States Attorneys in handling an additional 32 cases a year. By the end of 1984, each attorney personally handled an average of 42 cases and supervised 56 cases. Over the same period that this 75 percent increase in individual caseload was accomplished, we maintained and, in many instances, improved upon our record of litigative successes. The information technology program implemented by the Civil Division has been a decisive factor contributing to the improvements.

In keeping with our policy to monitor the effect of our information technology program, the Civil Division has undertaken periodic evaluations of our major automation initiatives. The most impressive productivity and efficiency achievements have been attributed to our office automation and automated litigation support programs.

The Automated Management Information Civil User System (AMICUS) was implemented in 1982 to provide litigating units with the spectrum of office automation services needed to meet attorneys' specialized needs. The systems and applications software, minicomputers, terminals and local area networks comprising AMICUS provide attorneys with sophisticated word processing capabilities and automatic access to legal research data bases, litigation support data bases and the Civil Division's case management and timekeeping systems. The most definitive AMICUS evaluations completed to date have revealed substantial system benefits:

- Attorneys using AMICUS are able to invest nine percent more of their time in "thought work," (i.e., legal document creation and analysis) than do attorneys without access to AMICUS,
- AMICUS speeds the conduct of legal research by 53 percent,
- AMICUS improves significantly the quality of legal research,
- AMICUS speeds the creation of legal documents by 44 percent,
- AMICUS saves 39 percent of the cost of transferring critical documents between cities in which the Division has offices, and
- AMICUS saves 24 percent of the cost of transferring critical documents between buildings occupied by the Division in Washington, D.C.

The net benefits of these improvements have been valued at $1.3 million during the 1983 through 1984 period when AMICUS was available to 45 percent of the Division's employees. Annual net benefits are expected to rise to $4.8 million in 1987, when AMICUS is available to all potential users at the Civil Division.

Stand-alone video word processors are used by those Civil Division units that currently do not have access to AMICUS. This technology was introduced during 1981 and 1982 to replace electric and magnetic card typewriters. Using the old technology secretaries produced an average of 35,489 pages of typewritten material per workyear. Introduction of the stand-alone video word processor resulted in the production of an average of 70,528 pages of typewritten material per workyear -- an improvement of 98.7 percent! The net benefits attributable to the use of stand-alone video word processors (excluding AMICUS) were estimated to be $1.2 million in 1984.

The Civil Division's Automated Litigation Support Program is designed to provide the technology and services needed to enable attorneys to master and use evidentiary information contained in millions of pages of written documents and transcripts of depositions, hearings and trials. Today the program provides modern micrographic and computer support to 30 cases and families of cases including the very large asbestos and WPPSS litigation. Although the program has only been operational for 18 months, substantial benefits have been realized:

- Improved mastery of the evidentiary information enables our attorneys to build stronger cases and improve the outcome of litigation by 26 percent. This benefit manifests itself in additional dollars saved or recovered by the Government.
- Attorney, paralegal and clerical time is saved.

The net value of these benefits has been estimated at $193,608,142 for 1984. In 1985 these benefits are expected to rise to $207,370,509 as the dollar value of claims increases and the level of automated litigation support is expanded to support new cases.

QUESTION:

The Civil Division budget submission shows planned expenditures for AMICUS equipment and for the leasing of two other systems including CPU's, terminals, and printers.

ANSWER:

The Civil Division's 1986 plan did provide for expenditures for AMICUS equipment and for the leasing of two other systems, the IBM System/38 to support our Management Information System applications and a new CPU to support electronic mail. Further study of the functional requirements for electronic mail resulted in the elimination of plans to acquire a new CPU for that application. We found that the use of time-sharing services acquired commercially or through the Justice Data Center represents a more feasible vehicle for operating an electronic mail application. The costs of this alternative method of acquiring this service do not differ materially.

QUESTION:

Describe the different systems maintained by the Division, their applications, and the program functions supported.

ANSWER:

A summary description of each of the systems has been provided to the Subcommittee.

QUESTION:

Are there current or planned efforts to integrate these systems? Can these sytems be integrated to achieve greater economy? Provide documentation to support your answers.

ANSWER:

Civil Division's automated information systems have been designed and implemented to achieve the highest degree of integration economically and technically feasible. AMICUS communications software and the local area network have served as the primary vehicles for establishing linkages between Civil Division's systems applications. At a single terminal session using AMICUS, an attorney can access commerical and Departmental legal research data bases, System/38 applications and all the office automation functions available through AMICUS including word processing and inter-city document transfer. The use of customized communications software, protocol convertors and an advanced data communications network has enabled electronic interfaces to operate reliably in a multi-vendor environment. This approach has allowed the Civil Division to enjoy the benefits of operating integrated systems while having the flexibility needed to satisfy the functional requirements of discrete and varied system applications.

A higher degree of integration will be accomplished through implementation of the AMICUS II contract, scheduled for award during the first quarter of FY 1986. Vendors are required to expand upon the integration achieved with the current configuration by providing full integration with portable terminals and micro-computers.

We have projected net benefits of $4.5 million in 1987 as the implementation of AMICUS II is completed. Part of the increase is attributable to the additional economies that are expected as a result of the integration of portable terminals and micro-computers. At any given time, about 40 percent of Civil Division attorneys are litigating cases in remote locations. Portable AMICUS terminals will enable access to and transfer of legal research and evidentiary data as well as pertinent documents and briefs. Alternative methods of acquiring access to these kinds of information are more costly and require more time to execute. The integration of micro-computers will enable users to download data from large files and to perform any number of manipulations. The alternative of acquiring programming services for these specialized and diverse data analyses would require substantially more resources.

QUESTION:

The Civil Division's budget submission states that Division employees need only a single multipurpose terminal to access Division, Department, and commercial computers for litigation support, legal research, case management, accounting and personnel management services. Will this reliance on a single multipurpose terminal result in the replacement of all special purpose terminals currently used only for certain applications? If not, why not?

ANSWER:

By the end of FY 1987 all Civil Division users will have access to AMICUS II via individual workstations. Although we must await contract award to determine the precise system configuration to be acquired, we anticipate that most workstations will have dumb terminals, some will have micro-computers and that some portable terminals will be available to litigating branches, depending on individual requirements. Acquisition of this equipment will obviate the need for all existing stand-alone word processing equipment and the majority of existing special purpose terminals. Consequently, our plan calls for the phased termination of leases for the vast majority of special purpose terminals and for all stand-alone word processors as AMICUS II is installed.

A handful of special purpose terminals will be retained: Our contract with the provider of the LEXIS timesharing service requires the lease of specialized LEXIS printers. This mandatory contract clause is intended to prevent unauthorized duplication of the entire commerical data base. We also intend to retain a small number of terminals for contractor use in support of data entry and system development and maintenance purposes. This approach is the most cost effective and technically acceptable method of meeting the litigating units' automation requirements while addressing the limited and unique data entry and system development/maintenance requirements. A requirement that all workstations must support systems operations and development needs would result in higher costs without providing any discernible benefits to the majority of users.

U.S. Attorneys

QUESTION:

The exhibits supporting the Department's submission state that versions of PROMIS tailored to each U.S. Attorney's office would be running on computers in the 22 to 30 largest U.S. Attorneys Offices and on word processing equipment in the remaining offices. Have requirements been studied and documented for each U.S. Attorney's office? Provide copies of any user requirements studies.

ANSWER:

The plan to install PROMIS on computers and word processors in the offices of the United States Attorneys was based on a pilot project conducted in four offices in 1981 and 1982. The determination of how many offices would require computers for caseload management was made as a result of that pilot project. In the first 18 large offices which received the computer version of PROMIS, individual requirement studies were conducted, and the system was tailored to meet the specific needs of each office. Over time, as more offices were implemented, the tailoring changes became fewer and fewer. The system implemented in the District of Maryland has now been adopted as a standard and is being used for all additional computer sites. A copy of a typical computer requirements analysis has been provided to the Subcommittee.

Requirement analyses were done for several of the smaller districts which were to receive the word processing version of PROMIS. The requirements of these smaller offices varied little from district to district. The word processing system which has been developed by the Executive Office for United States Attorneys (see the question below), is identical for all districts except for the types of management reports which are produced.

QUESTION:

Please provide documentation to show the useful life of the major computers and word processing systems to be located in each office. When will these systems require replacement? Is this automation project related to a long-range plan? Please provide a copy.

ANSWER:

The contracts which were awarded to Prime Computer, Inc. for mini-computers and to Lanier Business Products, Inc. for word processors in early 1983 both specify a system life of 72 months from date of contract award. Because of changing technology, the useful life of the Lanier equipment will not extend beyond 72 months. Plans are being made to begin replacing these systems with more advanced equipment in FY 1988. The useful life of the Prime computers should easily extend beyond the stated 72-month system life. Plans are being made to upgrade these machines beginning in FY 1988; however, total replacement should not be necessary for several more years.

The computer and word processing contracts were awarded specifically to provide equipment on which to operate a caseload management system; and in the case of the Lanier equipment, to provide modern word processing facilities to smaller offices which had little or no modern equipment. These contracts were not part of any published long-range plan.

The Executive Office for United States Attorneys is now preparing a long-range Automated Information Systems Strategic Plan and an associated short-range Tactical Plan as part of the overall Department of Justice planning process. The replacement of the Lanier equipment, upgrade of the Prime equipment, and the requirements for other automated systems to support the United States Attorneys will be discussed in those plans.

QUESTION:

The budget submission discusses "in-house" software development for word processing and case management functions to avoid cost over-runs of an existing contract. What is the projected cost of this effort and any other planned in-house software development efforts? List and describe the projected savings referred to above.

ANSWER:

The contract to implement PROMIS in the offices of the United States Attorneys ended in March 1985. The contractor charged approximately $9 million to operate the computer version of PROMIS on a time-sharing computer for ten districts on an interim basis, and to implement the computer version of PROMIS in 20 districts. The contractor did not successfully implement any word processing version of PROMIS, although an additional $1.2 million was charged in the effort to do so before that portion of the contract was terminated in February 1984. Thus, the total charge to the Government to operate an interim time-sharing system and to implement a caseload management system in 20 districts was $10.2 million, which is very nearly what the contractor originally estimated it would cost to complete the nationwide effort. The Government believes that it owes the contractor only $8.1 million for its efforts. The remaining $2.1 million is currently in dispute.

Given the partial contract termination, the amount in dispute, and the fact that the contractor did not successfully implement any word processing systems, it is impossible to determine what it would have ultimately cost to complete the implementation effort using contractor support. Since February 1984, the Government has expended approximately $200,000 to develop an alternative system for use on the word processing equipment, and to implement that system on a test basis in three districts. The costs to complete implementations on computers and word processors as discussed in the response to a question below, will be approximately $3 million split evenly between FYs 1986 and 1987. These costs do not include the cost of acquiring the 15 additional minicomputers which are required because of unforeseen caseload increases.

QUESTION:

The budget submission discusses a need for information in Washington headquarters on the activities of each U.S. Attorney (specifically, litigation and case management information). How is the information to be transferred from each U.S. Attorney's office? Is there a need for a data communications network?

ANSWER:

The data which is used in each United States Attorney's office to manage office operations is used in Washington to justify budget requests, allocate resources across the individual districts, and to respond to requests for information from the Congress, OMB, other Federal agencies, the public, and the various components of the Department of Justice itself. This data is transferred to Washington on a monthly basis by the submission of a magnetic tape from the offices operating computers and a floppy disk from offices operating word processors. There is no need for a communications network to support these requirements.

QUESTION:

Is there a plan for a network? If so, please describe and supply supporting documentation.

ANSWER:

The United States Attorneys do have a need to quickly transfer certain textual documents relating to specific litigation to Washington for review and update (e.g., affidavits, applications, orders, and other materials relating to cases utilizing electronic surveillance). There is also a need to receive such documents from the litigating divisions for review and filing with the court. A communications network would be helpful to support these requirements. In this regard, the Executive Office for United States Attorneys is supporting the Justice Management Division in its efforts to define communications network requirements and acquire network facilities for the entire Department of Justice.

QUESTION:

The U.S. Attorney's budget submission (narrative, section 43A) states that the Executive Office for U.S. Attorneys will develop and implement a new case tracking system in 72 U.S. Attorneys offices to replace the Docket and Reporting System. What are the planned timeframes for implementation of case management systems for the remaining 72 offices? How many of these offices will use minicomputers to manage their caseload? How many offices will use wordprocessing systems to manage their caseload?

ANSWER:

PROMIS systems implementation will be complete in late FY 1987. At that time, caseload management will be performed on minicomputers in 45 districts and on word processors in the remaining districts.

QUESTION:

Has the Executive Office for U.S. Attorneys ensured that the new systems for the 72 offices and the existing PROMIS systems at the remaining offices will produce caseload information that can be summarized accurately and consistently on a nationwide basis?

ANSWER:

Common definitions for case types, case stages, charges, dispositions, and other such items of information are being used for both PROMIS and the word processing-based systems. Thus, consistent information will be available for summarizations on a nationwide basis.

Bureau of Prisons

QUESTION:

The Bureau's submission in the Department of Justice "Information Technology Systems Exhibits for the FY 1986 Budget Request" refers to a recently completed formal Automated Information Systems (AIS) plan. The plan is said to provide a thorough analysis of BOP's information technology requirements. Would you please provide a copy of this plan for the Subcommittee's review.

ANSWER:

A copy of the Bureau's Long-Range ADP Plan has been provided to the Subcommittee.

QUESTION:

The Bureau is requesting $999,000 in capital investment funds to acquire microcomputers and software for its institutions, regional offices and central office. How were the requirements for these machines determined and what is their intended use? What is the relationship between these machines and those evisioned as replacements for your existing SENTRY terminals, identified as your proposed FY 1987-88 acquisitions. How will these microcomputers and those proposed for subsequent acquisition communicate with the host computer at the Justice Data Center and access the SENTRY system? How will this communications configuration differ from the existing SENTRY system and what will be the telecommunications and data processing impact of this configuration?

ANSWER:

A field survey was conducted and the primary use will be word processing. Current technology will permit networking most of the microcomputers into the distributive system the Bureau plans to acquire. The microcomputer will communicate with a local minicomputer by emulation of standard terminal protocols, e.g. IBM 3270. They will communicate with the host mainframe through the minicomputer. The national SENTRY network now in place will continue to operate under current protocols until the Justice Telecommunications Network (JTN) is available. Our plan is to utilize the JTN to meet future needs. Local area networks will be established through the use of mini- and microcomputers in the field. Since it is planned to move much of the data processing to local levels on the minicomputer, the demand on telecommunications will lessen as will the demand on central data processing.

QUESTION:

Please provide any detailed feasibility and cost studies supporting the decision to acquire your proposed distributed processing system. If not already included in these studies please address to what extent data traffic is anticipated to increase, what changes/enhancements will be required to the existing SENTRY telecommunications network, what communications software changes may be needed, and what initial and recurring costs are involved in acquiring and operating the proposed distributed system.

ANSWER:

The requested information is included in the Technical Design and Selection section of the ADP Plan provided to the Subcommittee.

QUESTION:

Last year the Department of Justice requested funding for a consolidated departmental telecommunications network to which the Bureau would subscribe. How has the Bureau planned for the possibility of future participation in such a consolidated network and what ramifications would such a network have for the Bureau's proposed distributed processing system? Please address such potential concerns as network control and compatibility between the Bureau's proposed network and a Justice-wide network.

ANSWER:

The Bureau plans to use the JTN, and we expect this new technology will improve response time through improved technology. The JTN would replace our existing network and would not impede development of the Bureau's distributed system. Currently, Bureau staff maintain the Bureau's network.

QUESTION:

The Bureau will be introducing end-user computing capability into its institutions and increasing the amount of direct access into its central database. This creates an environment requiring increased attention to computer security. Please describe the measures the

Bureau has taken or planned to ensure security of its systems and the integrity of its central data base and planned local applications.

ANSWER:

Security steps we have taken and plan to take include:

- The use of dedicated lines which do not permit dial-up access.
- Data requiring security is encrypted at the database.
- All institutional ADP equipment is secured. Controllers are in secure areas. All terminals have locks.
- Policy clearly requires locked security of all hardware and software in the institution.
- All software programs have unique access codes.
- In the near future, the Bureau plans to implement passwords for all system access.

Office of Special Investigations

The following questions concern the operations of the Office of Special Investigations (OSI) of the Department of Justice. There have been many allegations both frivolous and credible about the activities of the OSI. These questions are, in part, intended to respond to these allegations and to alleviate legitimate concerns. The OSI activities that form the subject of the questions are those which are performed pursuant to the authority granted to the Department of Justice by P.L. 95-549. Please feel free to include at the conclusion of any of your answers additional information that you believe may be helpful to the Committee.

QUESTION:

How many war criminals does OSI estimate are residing in the United States today?

ANSWER:

We do not know, nor do we believe anyone knows, how many Nazi war criminals are residing in the United States today. Since its inception, OSI has reviewed over 850 cases of alleged or suspected Nazi war criminals, over 500 of which have been closed without formal action. More than 300 investigations of individuals are ongoing. We simply cannot estimate with any degree of accuracy the number of war criminals now residing in the United States, but our research definitely indicates a high probability that many more suspects than now are known reside in this country. We will likely review/investigate approximately another 300 individuals.

QUESTION:

As of May 1, 1985, how many revocation-of-citizenship cases have been brought by the OSI? Please cite the names of the cases, the court in which each case was brought, and the date in which each revocation action initially was commenced in court.

ANSWER:

As of May 1, 1985, the following revocation of citizenship cases have been litigated by OSI:

NAME	COURT	DATE COMMENCED
Valerian Trifa	E.D. Michigan	05/16/75
Feodor Fedorenko	D. Connecticut	08/15/77
John Demjanjuk	N.D. Ohio	08/25/77
Frank Walus	N.D. Illinois	01/26/77
Sergei Kowalchuk	E.D. Pennsylvania	01/13/77
Mykola Kowalchuk	E.D. Pennsylvania	01/13/77
Bohdan Koziy	S.D. Florida	10/20/79
Karl Linnas	E.D. New York	11/29/79
Wolodymir Osidach	E.D. Pennsylvania	11/20/79

NAME	COURT	DATE COMMENCED
Arnolds Trucis	E.D. Pennsylvania	06/20/80
Michael Dercacz	E.D. New York	07/07/80
Liudas Kairys	N.D. Illinois	08/13/80
Talivaldis Karklins	C.D. California	01/29/81
Conrad Schellong	N.D. Illinois	03/17/81
Otto von Bolschwing	E.D. California	05/27/81
Kazys Palciauskas	M.D. Florida	06/15/81
Juozas Kungys	D. New Jersey	07/22/81
Jurgis Juodis	M.D. Florida	10/26/81
Albert Deutscher	N.D. Illinois	12/17/81
Vladimir Sokolov	D. Connecticut	01/27/82
Elmars Sprogis	S.D. New York	06/23/82
Basil Artishenko	D. New Jersey	12/12/82
Mykola Schuk	E.D. Pennsylvania	02/08/83
Antanas Virkutis	N.D. Illinois	03/14/83
Antoly Hrusitzky	M.D. Florida	08/09/83
George Theodorovich	E.D. PA, D. D.C.	01/31/84
Michael Popczyk	D. Massachusetts	06/28/83
Vytautas Gudauskas	D. Massachusetts	06/04/84
Jonas Klimavicius	D. Maine	05/30/84
Matthew Katin	D. Massachusetts	11/09/84

QUESTION:

How many other revocation-of-citizenship cases is the OSI presently preparing for litigation?

ANSWER:

OSI is currently reviewing some 300 cases of suspected Nazi war criminals, approximately 225 of which ultimately could result in denaturalization litigation.

QUESTION:

As of May 1, 1985, in how many cases was the OSI successful in the trial courts? Please cite any reported opinions in these cases.

ANSWER:

As of May 1, 1985, OSI was successful in the trial courts in 13 cases, the citations for which are attached hereto. The names of the cases follow:

1. Valerian Trifa
2. Frank Walus
3. John Demjanjuk
4. Bohdan Koziy
5. Karl Linnas
6. Wolodymir Osidach
7. Conrad Schellong
8. Otto von Bolschwing
9. Kazys Palciauskas
10. Antoly Hrusitzky
11. George Theodorovich
12. Michael Dercacz
13. Basil Artishenko

QUESTION:

As of May 1, 1985, in how many cases was the OSI unsuccessful in the trial courts? Please cite any reported opinions in these cases.

ANSWER:

As of May 1, 1985, the trial courts found in favor of the defendant five times. See Kowalchuk, Kairys, Kungys, Fedorenko and Sprogis citations on the attached citation table.

QUESTION:

Regarding the cases mentioned in the two questions above, in how many of these cases has the losing party appealed or sought some form of direct or collateral judicial review? Please specify the type of review being sought. Please cite any reported opinions in these cases.

ANSWER:

Out of the thirteen cases found in favor of the Government in the district courts, nine defendants appealed. All but one* of these appeals were affirmed by the circuit courts.

(1) Trifa: Appealed his consent judgment revoking citizenship. The Sixth Circuit affirmed his denaturalization; the Supreme Court denied his petition for writ of certiorari.

(2) Demjanjuk: The Sixth Circuit affirmed his denaturalization. Petition for writ of certiorari to the Supreme Court was denied.

(3) Koziy: Defendant's motions for new trial, to vacate the decision of the court, and to amend the court's decision were all denied. The Eleventh Circuit affirmed the district court decision. Defendant then petitioned for a rehearing and the petition was denied.

(4) Linnas: The Second Cicuit affirmed the lower court decision. Petition for writ of certiorari was denied by the Supreme Court.

(5) Osidach: Defendant filed an appeal with the Third Circuit Court of Appeals, but died before the appeal could be heard.

(6) Schellong: Defendant's motion for reconsideration and new trial was denied by the district court, and an appeal was filed with the Seventh Circuit. The Court of Appeals affirmed the lower court's decision. The Supreme Court denied defendant's petition for writ of certiorari.

(7) Palciauskas: Defendant filed an appeal to the Eleventh Circuit. The Court of Appeals affirmed the district court decision.

(8) Theodorovich: Defendant filed a motion for relief from default judgment in the district court. The motion was denied. Defendant then filed a motion for stay of judgment in the district court and the Court of Appeals. Both were denied.

(9)* Walus: (Prior to OSI) District Court found in favor of the Government, but the Seventh Circuit Court of Appeals reversed the decision, holding that newly discovered evidence advanced by the defendant following the trial cast doubt on the district court's verdict. The appellate court vacated the judgment and remanded the case to the district court for possible retrial. OSI did not go forward with a retrial.

Citations of these cases can be found on the attached citation table.

OSI appealed all five decisions found in favor of the defendants. Four appeals are still pending. The fifth, Fedorenko, was reversed in favor of the United States.

QUESTION:

As of May 1, 1985, how many deportation cases have been brought by the OSI? Please cite the names of the cases and the date on which each deportation proceeding initially was commenced.

ANSWER:

Twenty-two deportation cases have been filed by OSI. They are:

(1) Edgars Laipenieks, 06/02/81, San Diego, CA.
(2) Alexander Lehmann, 11/23/81, Cleveland, OH.
(3) Karl Linnas, 06/25/82, Westberry, N.Y.
(4) John Demjanjuk, 07/02/82, Cleveland, OH.
(5) Michael Dercacz, 08/04/82, Brooklyn, N.Y.
(6) Hans Lipschis, 06/08/82, Chicago, IL.
(7) Reinhold Kulle, 12/03/82, Chicago, IL.
(8) Antanas Bernotas, 07/08/83, Chicago, IL.
(9) Conrad Schellong, 12/08/83, Chicago, IL.
(10) Henrikas Benkunskas, 03/25/84, Chicago, IL.
(11) George Theodorovich, 04/09/84, Philadelphia, PA.
(12) Andrija Artukovic, 05/09/51, Los Angeles, CA. (filed by INS)
(13) Bronius Kaminskas, 10/13/76, Hartford, CT. (filed by INS)
(14) Boleslavs Maikovskis, 12/20/76, Brooklyn, N.Y. (filed by INS)
(15) Vilis Hazners, 01/28/77, Baltimore, MD. (filed by INS)
(16) Karlis Detlavs, 10/01/78, Baltimore, MD. (filed by INS)
(17) Mercis Paskevicius, 06/24/80, Miami, FL.
(18) Valerian Trifa, 10/29/80, Detroit, MI.
(19) Feodor Fedorenko, 03/17/81, Hartford, CT.
(20) Joseph Kisielaitis, 06/01/84, Boston, MA.
(21) Kazys Palciauskas, 09/28/84, Chicago, IL.
(22) Bohdan Koziy, 06/14/84, Miami, FL.

QUESTION:

How many other deportation cases is the OSI presently preparing for litigation?

ANSWER:

Approximately 75 cases under review could result in deportation actions.

QUESTION:

As of May 1, 1985, in how many of these cases was the OSI successful? Please cite any reported opinions in these cases.

ANSWER:

OSI has been successful in obtaining Orders of Deportation in four cases to date: Trifa, Lipschis, Fedorenko, and Lehmann. (Citations to these cases are available on the attached citation table.)

QUESTION:

As of May 1, 1985, in how many of the cases was the OSI unsuccessful? Please cite any reported opinions in these cases.

ANSWER:

To date, the Office of Special Investigations has lost two deportation cases: Hazners and Detlavs. Both of these cases were filed and lost before the creation of OSI, but subsequently were appealed by OSI. See citation table for citations.

QUESTION:

Regarding the cases mentioned in the two questions above in how many of these cases has the losing party appealed or sought some form of direct or collateral judicial review? Please specify the type of review being sought. Please cite any reported opinions in these cases.

ANSWER:

Trifa, Fedorenko, Linnas, Demjanjuk, Schellong, and Kulle have all appealed Immigration decisions in favor of the Government. Trifa and Fedorenko were subsequently deported. Linnas was found deportable by the Board, but the case was remanded to the Immigration Judge for consideration of the designated country of deportation. Demjanjuk, Schellong and Kulle appeals are still under the consideration of the Board of Immigration Appeals (BIA).

The Government appealed the decisions of Hazners, Maikovskis, and Laipenieks. It lost the Hazners appeal and won the BIA appeals in Maikovskis and Laipenieks. However, both Maikovskis and Laipenieks have appealed the BIA decisions to the district courts.

Citations Table

Artukovic

Artukovic v INS, 693 F.2d 894 (9th Cir. 1982)

In re Artukovic, A7 095 961 (BIA, undated)

In re Artukovic, A7 095 961 (BIA, May 21, 1984)

In the Matter of the Extradition of Artukovic, CV84-8743-R(B), C.D. CA. (1985)

Demjanjuk

U.S. v Demjanjuk, 518 F. Supp. 1362 (N.D. Ohio 1981), aff'd, 680 F.2d 32 (6th Cir. 1982), cert. denied, 103 S. Ct. 447

In re Demjanjuk, A8 237 417 (BIA Feb 14, 1985)

Dercacz

U.S. v Dercacz, 530 F.Supp. 1348 (E.D. N.Y. 1982)

Detlavs

In re Detlavs, A7 925 159 (BIA, October 15, 1981)

Fedorenko

In re Fedorenko, A7 333 468 (BIA, April 17, 1984)

U.S. v Fedorenko, 597 F.2d 946 (5th Cir. 1979), aff'd, 449 U.S. 490 (1981)

Hazners

In re Hazner, A10 305 336 (BIA, July 15, 1981)

Kairys

U.S. v Kairys, 600 F.Supp. 1254 (N.D. IL. 1984)

Kowalchuk

U.S. v Kowalchuk, 571 F.Supp. 72 (E.D. Pa. 1983), reversed, No. 83-1571 (3d Cir. September 11, 1984)

Koziy

U.S. v Koziy, 540 F.Supp 25 (S.D. Fla. 1982), aff'd, 728 F.2d 1314 (11th Cir. 1984)

Koziy v. U.S., No. 2154, cert. denied, O.T. 1984

In re Koziy, A7 347 878 (BIA April 9, 1985)

Kungys

U.S. v Kungys, 571 F. Supp. 1104 (D. N.J. 1983)

U.S. v Kungys, 575 F. Supp. 1208 (D. N.J. 1983)

Laipenieks

Matter of Laipenieks, A11 937 435 (June 9, 1982), reversed 18 I&N Dec. 433 (BIA 1983), appeal docketed, No. 83-7711 (9th Cir. September 19, 1983)

Linnas

In re Linnas, A8 085 626 (BIA, July 31, 1984)

U.S. v Linnas, 527 F.Supp. 426 (E.D. N.Y. 1981), *aff'd*, 685 F.2d 427 (2d Cir. 1982), *cert. denied*, 103 S. Ct. 179 (1982), 459 U.S. 883 (1982)

Maikovskis

In re Maikovskis, A8 194 566 (BIA, January 9, 1981)

In re Maikovskis, A8 194 566 (BIA, August 14, 1984)

Osidach

U.S. v Osidach, 513 F.Supp. 51 (E.D. Pa. 1981)

Palciauskas

U.S. v Palciauskas, 559 F.Supp. 1294 (M.D. Fla. 1983), *aff'd* 734 F.2d 625 (11th Cir. 1984)

Schellong

U.S. v Schellong, 547 F.Supp. 569 (N.D. Il. 1982), *aff'd.* 717 F.2d 329 (7th Cir. 1983)

Theodorovich

U.S. v Theodorovich, 102 F.R.D. 587 (D.C. D.C. 1984)

Trifa

U.S. v Trifa, 662 F.2d 447 (6th Cir. 1981), *cert. denied*, 456 U.S. 975 (1982)

Trucis

U.S. v Trucis, 89 F.R.D. 671 (E.D. Pa. 1981)

Walus

U.S. v Walus, 453 F.Supp. 699 (N.D. Oh. 1978), *reversed*, 616 F.2d 283 (7th Cir. 1980)

QUESTION:

What are the major hurdles to OSI in investigating and litigating cases involving war criminals?

What, if any, changes in Federal law would assist OSI in fulfilling its statutory mission?

ANSWER:

The major obstacle to the successful completion of OSI's mission is one of delay. In order to deport from the United States a naturalized citizen who participated in Nazi-directed persecution and who thereafter concealed his Nazi-connected activities from American immigration authorities, OSI must litigate the same issues twice. Such a naturalized citizen must first be denaturalized in accordance with Section 340(a) of the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. §1451(a), which together with other Federal laws and rules of procedure entitle him to a bench trial followed by an appeal to one of the United States Circuit Courts, followed by the right to petition the Supreme Court for a writ of certiorari. Once OSI succeeds in obtaining a subject's denaturalization and exhausting his aforementioned appeals, it must then commence independent deportation proceedings against him under Section 242 of the INA, 8 U.S.C. §1252. Those latter proceedings, in turn, entitle an OSI subject to a second trial before an immigration judge, followed by a right of appeal to the Justice Department's Board of Immigration Appeals, followed by a right to a petition for review before a United States Circuit Court under Section 106(a) of the INA, 8 U.S.C. §1105(a), followed by the right, once again, to petition the Supreme Court for a writ of certiorari. In short, given the many layers of litigation mandated by the INA and the crowded civil case calendars of our Federal courts, the present procedure for denaturalizing and deporting OSI subjects preordains many years of procedural delays.

A possible means of avoiding such repetition would be for Congress to revise the INA to permit one consolidated trial and one set of appeals for persons whose denaturalization and deportation proceedings are predicated on the same issues of fact and law.

Another problem facing OSI is its inability under current law to render an alien deportable for false statements made by him under oath to Justice Department attorneys and investigators who seek to question him on his wartime activities and his possible concealment of them during the immigration process. (OSI routinely interviews subjects under oath before deciding whether to commence lawsuits against them. Those interviews are transcribed and may be attended by subjects' attorneys.)

This problem could be solved by providing a legal basis for deporting an alien who is shown, upon clear, unequivocal and convincing evidence, to have lied under oath about matters relating to his alleged inelibility for admission or continued residence in the United States.

QUESTION:

Please list the number, dates, and destinations of trips taken between January 1, 1984, and May 1, 1985, by OSI personnel to European countries for the purpose of investigating cases of alleged war criminals.

ANSWER:

1/19/84 - Israel
1/20/84 - Germany
1/20/84 - Germany & Israel
2/25/84 - Poland
3/11/84 - Germany & Austria
3/23/84 - Yugoslavia
5/12/84 - Germany & Poland
5/18/84 - Germany & Poland
6/21/84 - Germany & Sweden
6/23/84 - Austria

6/25/84 - Germany
7/7/84 - Germany
7/7/84 - USSR
8/6/84 - USSR
8/13/84 - Portugal
8/27/84 - Germany
8/31/84 - Poland
10/5/84 - England
12/20/85 - Czechoslovakia & Germany
2/23/85 - USSR
2/23/85 - Germany & Austria
2/24/85 - USSR

QUESTION:

Former Soviet attorneys such as D. Kaminskaya, Y. Luryi, F. Neznansky, and K. Simis have indicated that the Soviet Union in fact, if not in legal form, characterizes cases of alleged war crimes as "political" or "politically sensitive" cases. Based upon the experience of the OSI with the Soviet Government in investigating war crimes cases, is it your understanding that the USSR does in fact characterize the war crimes cases being investigated by the OSI as "political" or "politically sensitive" cases? Please explain.

ANSWER:

OSI has spoken to all of the above-named individuals. None of them has ever provided proof that the Soviet Government falsifies evidence for use by OSI in denaturalization and deportation cases brought in the United States. OSI's conversations with West German authorities have confirmed independently the fact that Soviet-supplied evidence in Nazi war crimes cases has not been found to be fabricated. West German officials (supported by court decisions) are adament that it is impossible for the Soviet Union to fabricate testamentary and documentary evidence successfully for use in a Western court proceeding.

OSI does not dispute the notion that World War II, the Nazi occupation of the U.S.S.R., and the collaboration of some Soviet citizens with German Nazi authorities are subjects of political signficance to the Soviet Government. However, it has been the experience of American and West German courts that the political significance of Nazi war crimes cases to the U.S.S.R. has not occasioned Soviet fabrication of evidence introduced in those cases. Indeed, the importance of these cases in the West to the Soviet Government strongly militates against its attempting evidentiary fraud: Such fraud, after all, if discovered by Western authorities, would tend to discourage both the use of any future Soviet-supplied evidence and the very prosecutions of alleged Nazi collaborators which the U.S.S.R. so strongly favors.

As the former chief West German war crimes prosecutor once told OSI, there are "more than enough real Nazis" in the United States and West Germany to prosecute without the application of evidentiary fraud by the Soviet Government against other, innocent persons in the West. In sum, the political significance of Nazi war crimes cases to the U.S.S.R. in no way discredits the evidence provided by the U.S.S.R. to OSI.

QUESTION:

The same former Soviet attorneys cited in the question above indicate that in "political" or "politically sensitive" cases, the Committee on State Security (KGB) either of the USSR or of one of the republics of the USSR or of both plays a significant part in the investigation of the case. Is this the understanding of the OSI? Please explain.

Is it your understanding that the Committee on State Security either of the USSR or of one of the republics of the USSR or of both has in fact taken part in the investigation of any of the cases being investigated by the OSI? What steps, if any, has OSI taken to determine whether the Committee on State Security of the USSR or of one of the Soviet republics or of both has in fact taken part in the investigation of any of the cases under investigation by OSI?

ANSWER:

OSI is aware that Soviet defector Imants Lesinskis (a former KGB employee) has acknowledged the involvement of the KGB in the investigation of Nazi war crimes cases intended for prosecution *in* the U.S.S.R. and in the publishing of propaganda involving war criminals. However, neither Lesinskis nor any other Soviet emigre or defector has stated that the KGB ever falsified or fabricated evidence for use in Nazi war crimes cases conducted in the West. Indeed, Lesinskis has testified that he knows of no case where the Soviet Union provided fabricated evidence to a Western court.

All of OSI's contact with the Government of the U.S.S.R. (*i.e.*, cables and oral communications) consists of its contact with officials of the Soviet Ministries of Foreign Affairs and Justice (*i.e*, Soviet procurators) and the Soviet Embassy in Washington, D.C. This contact is undertaken through the auspices of the United States Department of State and the American Embassy in Moscow. Neither the State Department nor any intelligence agency has advised of KGB interference in OSI proceedings or investigations.

QUESTION:

It has been alleged that evidence secured from Soviet sources or that has been acquired in the USSR is unreliable and should not be used by the OSI in the court proceedings against alleged war criminals in this country. Please describe in detail the tests and criteria to which the OSI subjects such evidence before proffering it in administrative or judicial proceedings in the United States.

ANSWER:

Forensic laboratory support by the Immigration and Naturalization Service Forensic Document Laboratory (FDL) was first provided in the John Demjanjuk case tried in Cleveland, Ohio, in 1981, and has continued to the present time. Similar support is provided by the FBI, CIA and Treasury Department when requested.

Since many of the original disputed documents are provided by the Soviet Union, charges of Soviet counterfeiting and forgery are common and every precaution is taken in the examination process to insure the authenticity and genuineness of the documents provided.

These examinations fall into three general areas.

a) Handwriting and handprinting examinations

b) Ink examinations

c) Paper examinations

The disputed handwriting is examined and compared to known genuine samples provided from various sources. In the course of these examinations, state-of-the-art techniques and equipment are used and all examinations are conducted by board-certified forensic document analysts with many years of experience.

The paper is examined instrumentally for chemical components not available in the years prior to the 1950's. These examinations can be quite extensive and are performed by forensic chemists from such agencies as the National Laboratory Center, the Bureau of Alcohol, Tobacco and Firearms (BATF) in Rockville, Maryland, and the Institute of Paper Chemistry in Appleton, Wisconsin.

The ink on the disputed documents is examined by ink chemists who are members of the BATF Laboratory. From their examinations they can determine whether the ink used is consistent with ink used at the time the document is purported to be made out. Often the ink can be compared to similar known documents from that period of time to determine whether they are the same.

When necessary, the documents can be processed by laser technology at either the FBI Laboratory or the BATF Laboratory in an attempt to restore latent fingerprint impressions left on paper. Fingerprints as old as 40 years have been restored on such documents. This is a non-destructive procedure and does not damage the document in any way.

In the examinations conducted on the provided Soviet documents, all available recognized tests are conducted by experienced and qualified personnel from various Federal forensic laboratories who are then called on to present their findings in court. Often this testimony is demonstrated through the use of photographic charts as in the case of all handwriting testimony.

Although charges that the documents are Soviet forgeries have often been made, all forensic examinations of such documents have failed to identify a single forgery.

QUESTION:

Based upon the communication of the OSI with the Soviet Government, is it your understanding that the Soviet Government plans to prosecute for war crimes any or all of the individuals deported by the United States to the Soviet Union?

ANSWER:

OSI does not know whether the Soviet Government plans to prosecute any or all persons deported to the U.S.S.R. from the United States who allegedly participated in war crimes. The Soviet Government has not made its plans known to OSI in this regard. However, it is OSI's understanding that former Treblinka death camp guard Feodor Fedorenko--the only OSI subject ever actually deported to the U.S.S.R.--has not been prosecuted for alleged war crimes by the Soviet Government.

QUESTION:

Based upon your understanding of Soviet law, what due process guarantees are in fact enjoyed by defendants in "political" cases in the Soviet Union? If you do not believe the term "political cases" is applicable to these cases, what due process guarantees are in fact enjoyed by defendants in war crimes cases in the Soviet Union?

ANSWER:

The conduct of OSI depositions in the Soviet Union is governed not by Soviet law, but by the American Federal Rules of Civil Procedure--the rules upon which their admissibility in American courts hinges. The same is true with regard to Soviet-supplied, Nazi-era exhibits offered to American courts by OSI. No document supplied by a Soviet archive has ever been found to be inauthentic (i.e., fabricated). It should be added that not only American courts but West German ones have admitted testimonial and documentary evidence obtained in the Soviet Union.

With regard to Soviet law, OSI notes that the following statutes appear to describe the rights of all criminal defendants in the U.S.S.R. to "due process": Soviet Code of Laws, General Part, Art. 52, 1960, as amended; Soviet Code of Laws, Code of Criminal Procedure, Art. 5, 12, 17, 19, 47-51, 58, 89-95, 99, 149-150, 168-172, 176, 201-202, 236, 245, 295-297, 325 et seq.; Soviet Code of Laws, Code of Criminal Procedure of the R.S.F.S.R., Art. 11, 1960, as amended.

QUESTION:

Does deportation of Baltic emigres to the Soviet Union violate the United States policy of nonrecognition of the Soviet annexation of the Baltic countries? Please explain.

ANSWER:

Deportation of Baltic emigres to the Soviet Union does not violate the United States policy of nonrecognition of the Soviet annexation of the Baltic countries. In connection with the case of Linnas, for example, the State Department has issued a formal declaration which states that the deportation of Linnas, an Estonian, to the Soviet Union would not violate the United States policy of nonrecognition. A copy of that declaration is enclosed for your convenience and information.

FILE: A8 085 626
IN RE: KARL LINNAS
IN DEPORTATION PROCEEDINGS

DECLARATION

I, Davis R. Robinson, declare as follows:

1. I am the Legal Adviser of the Department of State and have held that office since July, 1981.

2. In that capacity, I am responsible for the legal aspects of the formulation and implementation of United States foreign policy, including questions pertaining to State recognition. This Declaration is based on my personal knowledge or on information that I have received in the performance of my official duties as Legal Adviser.

3. I have been informed about the case of Karl Linnas and the July 31, 1984 decision of the Board of Immigration Appeals which raises a question concerning "the effect of the Soviet annexation of Estonia upon designation of a country of deportation" and which remands the case to the immigration judge inter alia to "consider the implications of the United States' refusal to recognize the Soviet annexation of Estonia . . . and articulate the statutory basis for selecting whichever country is designated." Slip op. at 16-17. Based on a request from the immigration judge for the position of the United States Government on this issue, the Department of Justice has requested the views of the Department of State concerning the effect of deportation of Mr. Linnas to the U.S.S.R. on the United States policy of non-recognition of the forcible Soviet incorporation of Estonia.

4. The Department of State has been informed by the Department of Justice that the U.S.S.R. is willing to accept Mr. Linnas into its territory. In addition, at the current time, no other country has agreed to accept Mr. Linnas.

5. The Department of State also has been informed that it

is the position of the Department of Justice that deportation of Mr. Linnas to the U.S.S.R. would be pursuant to section 243(a)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1253(a)(7). Under that section, deportation is directed "to any country which is willing to accept such alien into its territory." I have concluded, on the basis of the position of the Department of Justice, that the deportation of Mr. Linnas under 8 USC 1253(a)(7) to a place which we regard as within the territory of the U.S.S.R. would not as a matter of law contravene the longstanding and firmly held United States policy of nonrecognition of the forcible incorporation of Estonia into the U.S.S.R.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed at Washington, D.C.

on: December 20, 1984

Davis R. Robinson

DAVIS R. ROBINSON
LEGAL ADVISER

QUESTION:

Would deportation of Baltic emigres to the Soviet Union serve to legitimize the Soviet annexation of the Baltic states? Please explain.

ANSWER:

For reasons set forth in the State Department's declaration mentioned above, deportation of Baltic emigres to the Soviet Union would not serve to legitimize the Soviet annexation of the Baltic states.

QUESTION:

Would deportation of Baltic and Ukrainian emigres to the Soviet Union serve to legitimize the Soviet administration of criminal justice?

ANSWER:

In his December 20, 1984 affidavit, the State Department's Legal Advisor declared that the deportation of OSI subjects such as Karl Linnas to the Soviet Union would not contravene the "United States policy of non-recognition of the forcible incorporation of Estonia [and other Baltic territories] into the U.S.S.R." Similarly, the deportation of OSI subjects born in the Baltic states or the Soviet Union to the Soviet Union would not legitimize any internal legal procedures of the U.S.S.R. which the United States opposes. Indeed, it is well-settled in case law that the actions which a receiving state might take towards an alien deported there are legally irrelevant to whether he may be deported there under the INA, unless he has qualified for asylum in the United States. Matter of Ng, 10 I&N Dec. 428, 430 (BIA 1963); Matter of Linnas, File No. A8 085 626 (Imm. Ct. filed April 9, 1985). See United States v. Murff, 165 F. Supp. 633, 634 (S.D.N.Y. 1958), aff'd, 266 F.2d 957 (2d Cir.), cert. denied, 361 U.S. 840 (1959). Since Congress, in enacting Section 243(h) of the INA, 8 U.S.C. §1253(h), has prohibited specifically the granting of asylum to aliens deportable for their assistance in Nazi-directed persecution, their deportation to the U.S.S.R. is a function not of Soviet legal administration but of our own.

SUBCOMMITTEE RECESS

I might indicate to all present that this concludes our hearing this morning, and we will stand in recess now until Wednesday, April 24, when we will receive testimony from the DEA, FBI, Securities and Exchange Commission, and Legal Services Corporation.

We thank you all.

Mr. MEESE. Thank you, Mr. Chairman.

(Whereupon, at 11:17 a.m., Wednesday, April 17, the subcommittee was recessed, to reconvene Wednesday, April 24, 1985.)

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1986

WEDNESDAY, APRIL 24, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The Subcommittee met at 9:35 a.m., in room S–128, the Capitol, Hon. Warren Rudman presiding.

Present: Senators Rudman, D'Amato, Specter, Hollings, Chiles, Bumpers, and Lautenberg.

DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

STATEMENT OF JOHN C. LAWN, ACTING ADMINISTRATOR DRUG ENFORCEMENT ADMINISTRATION

ACCOMPANIED BY:
- FRANK V. MONASTERO, ACTING DEPUTY ADMINISTRATOR
- DONALD P. QUINN, ASSISTANT ADMINISTRATOR FOR FOR OPERATIONAL SUPPORT
- CHARLES R. NEILL, CONTROLLER, DEPARTMENT OF JUSTICE
- JOHN R. SHAFFER, DIRECTOR, BUDGET STAFF, DEPARTMENT OF JUSTICE

BUDGET REQUEST

Senator RUDMAN. The Committee will be in order. Today, the committee will review the fiscal year 1986 budget request for the Drug Enforcement Administration, the FBI and the Legal Services Corporation. We will reschedule the Securities and Exchange Commission for a later time.

Our first witness is John Lawn, Acting Administrator of the Drug Enforcement Administration. The budget request for the DEA totals $345,671,000 for fiscal year 1986.

Mr. Lawn, Due to our very heavy schedule, and due to the fact that the leadership has scheduled a meeting of Republican Senators at 11, we would appreciate it if you could keep your testimony compressed. That should be good news for witnesses; you will have less questions to answer here. However, you may have other questions to answer later for the record. Your entire statement will be put into the record. I understand you are going to waive giving a summary of that, am I correct on that?

Mr. LAWN. Yes.

[The statement follows:]

PREPARED STATEMENT OF JOHN C. LAWN
ACTING ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION

Mr. Chairman and Members of the Subcommittee:

I am pleased to come before you to discuss the budget request of the Drug Enforcement Administration. During my tenure as Deputy Administrator of DEA, this subcommittee has been supportive of our efforts. I want to thank you for this support.

I am pleased to report that there have been some encouraging signs this year which demonstrate continued progress in our drug enforcement efforts:

- Serious crime in our Nation has decreased over the past two and one-half years. Given what is known about the relationship between drugs and crime, we can see that the Federal drug strategy, formulated at the beginning of this Administration, is having a definite impact. I believe our efforts are making a difference in the Nation's well-being.

- Abuse of several of the more harmful drugs has stabilized according to the latest available data. The number of heroin addicts has stabilized at approximately one-half million, and the abuse of dangerous drugs has decreased by 12 percent.

According to data released by the National Institute on Drug Abuse (NIDA) in FY 1984, young people in the United States continued to record what has become a four-year decline in reported abuse of such drugs as marijuana, amphetamines, and barbiturates. For example, the number of high school seniors using marijuana on a daily basis is estimated to be 5.5 percent. This is the lowest level of reported use since the Government began keeping such statistics in 1975.

DEA recorded noteworthy increases in arrests, convictions, drug seizures and cannabis eradication during FY 1984. These solid accomplishments point to increased enforcement effectiveness.

One point should be emphasized. Continuing the momentum of our enforcement efforts will depend upon a continuing willingness to commit the necessary resources and cooperative efforts. Much more needs to be done. I must point out enforcement alone is not the answer. It is only one of the five elements of the Federal strategy.

BUDGET REQUEST

DEA's budget request for FY 1986 is for a total of $345,671,000 and 4,564 permanent positions, of which 2,210 are agents. This represents a net increase of 134 positions and $15,683,000 above the 1985 enacted level. Included in the proposed net increase is the full-year cost for a 1985 supplemental request for 156 positions to implement the administrative revocation provisions of the 1984 Comprehensive Crime Control Act, other management initiatives and uncontrollable changes and 22 fewer administrative positions.

AGENCY MISSION AND ROLE

DEA is the lead law enforcement agency responsible for investigating drug trafficking within the United States and the sole United States agency authorized to conduct foreign cooperative investigations.

Additionally, DEA has the responsibility to regulate and monitor the manufacture and distribution of controlled substances. DEA also is responsible for providing central leadership, management and coordination for intelligence relating to the suppression of illicit drugs.

The effectiveness of drug law enforcement has been improved through closer working relationships with law enforcement agencies at the Federal, State and local levels.

DEA/FBI CONCURRENT JURISDICTION

One of the many important drug law enforcement initiatives undertaken by this Administration was granting to the FBI concurrent jurisdiction with DEA to investigate violations of Federal drug laws.

DEA/FBI coordination of targets and investigations has become routine in both the field and headquarters. The number of joint DEA/FBI investigations has steadily increased since concurrent jurisdiction was implemented in 1982. There were 789 at the end of the FY 1984—a 233 percent increase over FY 1983. Similarly, in FY 1984, there was a total of 391 narcotic-related Title III investigations, of which 179 were conducted jointly by DEA and the FBI. This represents a 280 percent overall increase in the use of drug related Title III investigations and a 337 percent increase in the number conducted jointly between 1982 and 1984.

FBI participation in drug enforcement has increased Federal drug investigative resources by approximately 50 percent. The FBI is developing and substantiating connections among drug trafficking groups and both traditional and non-traditional organized crime organizations. Its expertise in money laundering, public corruption cases, assistance with fugitive apprehension, and technology has augmented the success of DEA.

I believe DEA has been effective in pursuit of the National Strategy to Prevent Drug Abuse and Drug Trafficking, as indicated by the following:

DOMESTIC ENFORCEMENT OPERATIONS

In the Domestic Enforcement program, the major thrust is the reduction of illicit narcotics and dangerous drugs domestically through enhanced coordination and intelligence sharing; and effective cooperation among Federal/State and local authorities. The maintenance of continuous investigative pressure on traffickers has led to increased arrests, prosecutions, and convictions of major violators, and forfeiture of their financial asset. Other achievements include:

- The DEA rate of arrests has gone from less than 1,000 per month in FY 1980 to nearly 1,100 per month in FY 1984. Arrests in those cases targeted at the top echelon, or Class I cases, have increased approximately 40 percent. Convictions are up from about 400 per month in FY 1980 to more than 900 per month in FY 1984.

- During this same time period, increases in drugs removed from traffic were also significant. Cocaine removals were up 380 percent and totalled 11.7 metric tons in FY 1984. Marijuana seizures increased 270 percent and heroin seizures increased 80 percent.

- During FY 1984, DEA investigations also accounted for the seizure of 190 clandestine laboratories, including 120 methamphetamine, 18 PCP and 17 cocaine laboratories.

ORGANIZED CRIME DRUG ENFORCEMENT OPERATIONS

The formation of 13 Organized Crime Drug Enforcement Task Forces, to target the highest level of organized crime and drug trafficking, has made a major contribution to the national drug enforcement effort. These task forces utilize resources from nine Federal agencies. In addition, maximum cooperation is promoted among State and local officers from over 100 law enforcement agencies who participate in 40 percent of Task Force cases. The success of the program has been impressive. From FY 1983, when the program was implemented, to the end of FY 1984, DEA participated in 747 cases initiated, 342 of which resulted in indictments.

OTHER COOPERATIVE DOMESTIC OPERATIONS

State and Local Task Forces

To complement the Federal drug enforcement effort, DEA provides leadership in gaining the effective participation of State and local resources toward the drug reduction efforts, with a minimal investment of Federal resources, freeing resources to target higher level traffickers. The State and Local Task Force program unites DEA Special Agents and State and local police officers into drug enforcement units in selected geographic areas. These task forces facilitate intelligence sharing among the participating agencies and provide the ability to target mid-level traffickers who prove difficult to investigate by only a single agency. By the end of 1984, 23 State and Local Task Forces were operational. This program resulted in 2,476 arrests during FY 1984. This program provides a good return on the Federal Government's investment.

Cannabis Eradication Program

The DEA domestic cannabis eradication/suppression program was established to ensure a coordinated effort between Federal, State, and local agencies involved in the eradication of cannabis cultivated in the United States. DEA's role, within current resource levels, is to encourage State and local eradication efforts and to contribute funding, training, equipment, investigative, and aircraft resources. The program has expanded from seven states in 1981 to 48 states in 1984.

In calendar year 1984, State and local eradication teams were responsible for the arrest of 4,941 individuals, the seizure of over 1,400 weapons and the destruction of almost 13 million plants (of which approximately 27 percent were the highly potent, highly cultivated sinsemilla variety). Also, 650 green houses used for growing cannabis were raided. This type of expensive cultivation shows that our efforts are becoming more effective as the growers attempt increasingly to conceal their cannabis crop.

EPIC

DEA operates the El Paso Intelligence Center (EPIC) which is a repository for tactical intelligence leads used to track the domestic and international movement of drugs, aliens and weapons. Nine Federal agencies participate in EPIC. Intelligence exchange agreements were completed with the last of the 50 state police organizations in 1984.

In FY 1984, EPIC processed 282,000 intelligence inquiries. EPIC data assisted in the seizures of 85 aircraft, 176 vessels, 36,000 pounds of cocaine, and 2.5 million pounds of marijuana. EPIC's unique, interagency cooperative approach is also being used as a prototype for the development of similar centers on a regional/statewide basis in this country and several foreign nations. Examples include the California Narcotics Information Network and intelligence centers in Venezuela and the Federal Republic of Germany.

INTERNATIONAL OPERATIONS

Through its Foreign Cooperative Investigations program, DEA works closely with the Department of State to control international drug trafficking. DEA carries out international activity by providing technical advice, investigative cooperation, intelligence exchange, diplomatic initiative assistance and the training for foreign officials sent to the United States as well as the providing of instructors to teach in the host countries. DEA provides a world-wide link in drug intelligence. There are currently 200 agents stationed in 60 foreign cities in 41 countries throughout the world. Internationally, it has become difficult to keep track of the so-called "record seizures," for they are being made on a regular basis, and each one is much larger than the last:

- Through a DEA monitored enforcement program, Mexico seized 10,000 tons of cannabis plants, which would have yielded 2,000 net tons of marijuana, and were growing in non-traditional areas.

  The raid also freed 7,000 migrant workers held by drug traffickers and seized a heroin processing laboratory.

- Based on DEA information, the Colombian government seized seven cocaine laboratory complexes and 10 tons of cocaine. Ambassador Lewis Tambs described the operation as the "largest drug raid ever in the world."

In 1984, there were notable successes, supported by DEA, in diplomatic initiatives to control drugs.

- Colombia implemented eradication programs for both marijuana and cocaine, and began extraditing Colombian drug traffickers wanted for prosecution in the United States.

- As a result of a conference co-sponsored by DEA, eleven Latin American countries, Canada and the United States determined that a cooperative regional communications and intelligence center for Latin America would be established.

OPERATION CHEM CON

One of the most promising international drug control programs is Operation Chem Con. It is an effort to monitor and control the distribution of chemicals needed to manufacture illicit drugs from the raw plant material. In order for this program to be successful, DEA must foster the cooperation of legitimate chemical manufacturers and law enforcement personnel from many nations. The Governments of Panama, Colombia, Brazil and others have played major roles. For example, a 55 gallon drum of ether, which retails for about $180 in the U. S. now costs a Colombian cocaine manufacturer upwards of $10,000. By making ether prohibitively expensive and unobtainable, we can restrict cocaine production, and hopefully its availability.

Given these successes, DEA is now applying these techniques to control production of other illicit drugs. For example, we are now monitoring acetic anhydride for heroin and the precursor chemicals needed to manufacture methamphetamine and PCP.

VIOLENCE AND TERRORISM

All nations are profoundly concerned by the increasing willingness of narcotics traffickers to use terrorist-type violence. The senseless assassination of Justice Minister Lara in Bogota in 1984 sparked a major expansion of Colombia's anti-narcotics program. The recent wave of killing of law enforcement officers in Mexico, including DEA Special Agent Enrique Camarena Salazar has strengthened the resolve of narcotics control agencies on both sides of the border. Agent Camarena's tragic death was a great loss to this agency and to his comrades.

DIVERSION CONTROL

DEA also enforces provisions of the Controlled Substances Act which pertain to the manufacture and distribution of controlled substances for medical and research purposes.

The Diversion Control program is responsible for the detection and prevention of diversion of drugs from legitimate channels.

Four types of investigations are conducted under this program:

- periodic unannounced investigations of drug manufacturers and wholesalers;
- criminal investigations of targeted registrants who are high-level violators;
- pre-registrant investigations which are conducted prior to the approval of DEA registration applications; and
- administrative revocation investigations of registrants which could result in the denial, suspension or revocation of a DEA registration based on public interest grounds.

Another purpose of the Diversion Control program is to identify international drug shipments which are destined for illegal smuggling operations. Through diplomatic and operational efforts, DEA has effectively curtailed the diversion of foreign-source methaqualone into the United States and has stimulated many initiatives and control measures taken by foreign governments, Interpol and the United Nations to reduce the international diversion of legitimate drugs and essential chemicals.

Other diversion related activities include the registering of all legitimate drug handlers, establishing manufacturing and production quotas of Schedule I and II substances, monitoring all imports and exports of controlled substances, and assisting State and local governments in their efforts to suppress drug diversion.

During FY 1984, DEA conducted 226 criminal investigations and 667 periodic unannounced investigations of DEA registrants resulting in 165 arrests and approximately $2 million in fines, penalties and asset removals. As a result of the 667 periodic, unannounced investigations conducted, corrective action was taken against 258 firms. A substantial increase in diversion investigator positions is being requested to implement the new administrative revocation provisions of the Comprehensive Crime Control Act of 1984. With this staffing increase, DEA could reduce the level of diverted drugs by an estimated additional 100 million dosage units per year.

PREVENTION AND EDUCATION

Preventing drug abuse before it starts is the long-range solution to resolving the drug problem. We, in Federal law enforcement, have a unique sensitivity and perception as to the consequences of drug abuse.
DEA is involved in its most ambitious prevention activity to date. DEA is reaching out to young people through a joint drug prevention venture with athletes in the Sports Drug Awareness Program. The FBI, the National Football League, along with its Players Association, the International Association of Chiefs of Police and the Office of Juvenile Justice and Delinquency Prevention all are supporting this program through the National Association of High School Athletic Coaches.

As a former coach, I am particularly sensitive to the need for such an effort. I believe the impact we can expect to make by reaching the younger generation of students through a vehicle to which they can better relate is great. Our goal is to reach 48,000 coaches in 20,000 high schools across the country who can in turn help us use 5.6 million student athletes as role models. These athletic leaders will exert positive peer pressure to keep other youths away from drugs. Due to the crucial needs and demands of the program, we are already expanding the scope of its activity. In the first six months of this program, over 3,000 coaches received information or training and over 100,000 specially prepared sports and drug abuse publications were distributed. Phase II of the program was expanded in November of 1984 to include 41 organizations to reach up to 57 million young people.

ORGANIZATION SUPPORT

I would also like to take this opportunity to acknowledge the important role which the DEA support staff plays in drug law enforcement. Our special agents are effective in our enforcement efforts because of the assistance they receive from the professional staffs in intelligence, science and technology, training, analytical testing laboratories, and logistical support.

COMPREHENSIVE CRIME CONTROL ACT OF 1984

I would like to conclude with a comment concerning the Comprehensive Crime Control Act of 1984.

For DEA, the impact will be great: increased trafficking penalties and bail reform; establishing administrative registrant revocation in diversion control; emergency drug scheduling; enhanced asset seizure and forfeiture authority; and uniform sentencing.

On the whole, we welcome this statute as an important signal to criminals and to the international community, that our Government means business in drug crime control.

This concludes my statement, Mr. Chairman. I shall be pleased to answer any questions you or other members of the subcommittee might have.

INTRODUCTION OF SENATOR D'AMATO

Senator RUDMAN. I believe what I am going to do, because my friend Senator D'Amato has a real conflict in his schedule this morning, is yield to Senator D'Amato. Then I will have some questions myself. We may also have other members here by that time, and we will give you questions for the record.

Senator D'Amato?

FISCAL 1986 OMB SUBMISSION

Senator D'AMATO. Thank you very much, Mr. Chairman. I am deeply appreciative of your courtesy in regard to this matter. Mr. Chairman, I have a copy here of the fiscal year 1986 budget request that the DEA originally submitted to OMB. Unfortunately, this original request is not the one subsequently submitted by OMB to the Congress.

Instead, OMB forwarded to this committee a request, in my view, that is simply not adequate. I urge the members of this committee and yourself, Mr. Chairman, to reject this watered-down version. I urge them, instead, to provide DEA with an increase of $53 million, or 12.5 percent over this year's level and an additional 300 drug enforcement agents and 200 support personnel.

This is what DEA requested from OMB; this is what DEA justified as necessary, and this, Mr. Chairman, is what I believe DEA should get. Really, we are talking about the people of the Nation. DEA's original budget request would reinforce our drug law enforcement capability by doing a number of very successful things: It would reinforce the Organized Crime, Drug Enforcement Task Forces; it would go into our domestic enforcement positions; it would create positions for a foreign cooperative investigation effort that is so very important.

I am going to ask, Mr. Chairman, that the balance of my remarks be included in the record as if read in their entirety.

Senator RUDMAN. Without objection, they will be.

[The statement follows:]

PREPARED STATEMENT OF HON. ALFONSE D'AMATO

U.S. SENATOR FROM NEW YORK

THANK YOU, MR. CHAIRMAN, FOR THE OPPORTUNITY TO BE HERE TODAY.

MR. CHAIRMAN, I HAVE HERE A COPY OF THE FY 1986 BUDGET REQUEST THAT DEA ORIGINALLY SUBMITTED TO OMB. UNFORTUNATELY, THIS ORIGINAL REQUEST IS NOT THE ONE SUBSEQUENTLY SUBMITTED TO CONGRESS.

INSTEAD, OMB FORWARDED TO THIS COMMITTEE A REQUEST THAT IS SIMPLY NOT ADEQUATE, AND I URGE THE MEMBERS OF THIS COMMITTEE TO REJECT THIS WATERED-DOWN VERSION. I URGE THEM INSTEAD TO PROVIDE DEA WITH AN INCREASE OF $53 MILLION, OR 12.5%, OVER THIS YEAR'S LEVEL, AND AN ADDITIONAL 300 DRUG ENFORCEMENT AGENTS AND 200 SUPPORT PERSONNEL.

THIS IS WHAT DEA REQUESTED. THIS IS WHAT DEA JUSTIFIED AS NECESSARY. THIS IS WHAT DEA SHOULD GET.

DEA'S ORIGINAL BUDGET REQUEST WOULD REINFORCE OUR DRUG LAW ENFORCEMENT CAPABILITY BY CREATING:

-- 250 ADDITIONAL POSITIONS FOR THE HIGHLY SUCCESSFUL ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES;

-- 94 DOMESTIC ENFORCEMENT POSITIONS TO SUPPORT THE ADMINISTRATION'S SPECIAL FOCUS ON HIGH-LEVEL TRAFFICKING ORGANIZATIONS;

-- 10 POSITIONS FOR THE FOREIGN COOPERATIVE INVESTIGATIONS PROGRAM TO EXPAND THE COOPERATIVE OPERATIONS THAT WE ARE UNDERTAKING WITH FOREIGN COUNTRIES TO REDUCE DRUG PRODUCTION AND TRAFFICKING BEFORE THE DRUGS EVER REACH OUR SHORES;

-- 31 positions for the Diversion Control Program to combat the illicit diversion of prescription drugs;

-- 16 positions to upgrade our drug intelligence operations here and abroad; and

-- 78 positions to provide laboratory support for Organized Crime Drug Enforcement Task Force (OCDETF) cases, and expand DEA's communications, air support, data processing, and other technical capabilities.

Mr. Chairman, the Justice Department's 1985 Report on our drug task forces clearly indicates that we are not winning the battle against drugs and drug traffickers.

About cocaine, it says: "The glut remains...The abuse of cocaine is widespread and growing."

On heroin: "The smuggling of opiates into the United States... increased in 1983-84."

On dangerous drugs: "The use of PCP increased in 1983 and again in 1984."

If we do not want to read the same report about this year, Mr. Chairman, we have a responsibility to reset our priorities, and support DEA's original budget request.

Thank you, Mr. Chairman.

DEA REQUEST

Drug Enforcement Administration

Salaries and Expenses

Summary Statement

Fiscal Year 1986

The Drug Enforcement Administration is requesting for 1986, a total of $391,803,000, 4,946 positions, and 4,682 workyears. This request represents program increases of $52,544,000, 508 positions, and 380 workyears over the base for 1986.

The primary mission of the Drug Enforcement Administration is to enforce the controlled substances laws and regulations of the United States of America, and to recommend and support non-enforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets. This mission makes DEA the lead agency responsible for the development of overall Federal drug enforcement strategy, programs, planning and evaluation.

This request contains five budget activities incorporating sixteen programs. The five budget activities are: Enforcement of Federal Law and Investigations; Intelligence; Research and Engineering; Support Operations; and Program Direction. The major initiatives and resource requests for 1986 for these activities and attendant programs are summarized below.

Enforcement of Federal Law and Investigations.

This enforcement activity represents 68.2 percent of DEA's appropriation request for 1986. The principal programs of this activity are Domestic Enforcement, Organized Crime Drug Enforcement (OCDE), Foreign Cooperative Investigations, Diversion Control, and State and Local Assistance. In support of the Administration's efforts against drugs, DEA will continue to place the largest amount of its resources and investigative talent into ensuring that drug traffickers are apprehended, their drugs removed from the marketplace, and their profits and financial assets are confiscated.

A program increase of 385 positions, 288 workyears, and $31,494,000 is requested in this activity over the 1986 base level. A major portion of this increase pertains to the OCDE program (250 positions, 187 FTE workyears, and $19,841,000). Substantial enhancements have also been included for Domestic Enforcement (94 positions, 70 FTE workyears, and $9,517,000) to support the Administration's special focus on high-level trafficking organizations. In order to strengthen DEA's overseas operations, and support the Administration's "source of supply" enforcement strategy, additional resources have been requested for the Foreign Cooperative Investigations program (10 positions, 8 FTE workyears, and $1,303,000). Additionally, the Diversion Control program would be enhanced (31 positions, 23 FTE workyears, and $833,000) to permit the implementation of a new Compliance Technician program and improve the State Assistance program.

Intelligence.

This activity represents 5 percent of the 1986 request. This program collects, analyzes, and disseminates drug information in support of DEA, other Federal, State, and local efforts to interdict or suppress the illicit movement of drugs. Additionally, this activity allows for the exchange of criminal drug information between DEA and its foreign counterparts.

A program increase of 16 positions, 12 workyears, and $2,064,000 is requested in this activity over the 1986 base level. This enhancement would permit DEA to fully meet National Intelligence Estimates survey data requirements, and substantially upgrade intelligence collection and processing operations at the El Paso Intelligence Center.

Research and Engineering.

This activity represents about one percent of DEA's 1986 appropriation request. This program develops and provides specialized covert equipment, operational engineering, and scientific support to enforcement and intelligence activities.

No program increases are identified for this activity in this appropriation request.

Support Operations.

Support Operations represent approximately 20 percent of DEA's 1986 appropriation request. The principal programs under this activity are DEA Laboratory Services, DEA Training, Technical Operations, ADP and Telecommunications, and Records Management. This activity provides the training and the equipment to meet the demands of DEA's mission objectives. It includes the maintenance of all investigative records, the entire DEA communications system, and a technical equipment program that includes aircraft operation.

The substantial program increase in this activity reflects DEA's commitment to the modernization and improvement of its communications and data processing technology. This effort will require 78 positions, 59 workyears, and $17,990,000 above the 1986 base level. Primary enhancements are to provide laboratory support for OCDE efforts, enhance DEA's investigative equipment and air support, modernize and expand DEA's ADP systems, and provide rotational and specialized training to DEA personnel.

Program Direction.

This activity consists of two programs: Executive Direction and Control, and Administrative Services. These programs total approximately 6 percent of the 1986 request. Included in these programs are the executive direction, administrative, legal, planning, public and congressional relations, inspections, and financial management functions of DEA.

A program increase of 29 positions, 21 workyears, and $996,000 is requested to provide increased staffing and support for these functions. These increases will strengthen selected headquarters-based functions, e.g., accounting and personnel management.

OMB REQUEST

Drug Enforcement Administration

Salaries and expenses

Summary Statement

Fiscal Year 1986

The Drug Enforcement Administration (DEA) is requesting a total of $345,671,000, 4,564 permanent positions, and 4,428 full-time equivalent workyears for 1986. This represents an increase of $9,177,000 in funding, a decrease of 22 permanent positions, and an increase of 107 full-time equivalent workyears over the 1985 anticipated appropriation of $336,494,000, 4,586 permanent positions, and 4,321 full-time equivalent workyears. These amounts include a program decrease of $2,225,000, 22 positions, and 22 FTE workyears, and net uncontrollable increases of $11,402,000 and 129 FTE workyears.

President Reagan has stated his intention to permanently eliminate organized crime as a force in the U.S. economy and as a threat to domestic peace and safety. Drug trafficking, with its enormous profits, is an attractive endeavor for both traditional and non-traditional organized crime. DEA's mission supports the President's goal by ensuring that drug traffickers are apprehended, their drugs removed from the marketplace, and their profits and financial assets confiscated. Our existing programs have had success. Organizational changes, management improvements, expanded DEA/FBI investigations and cooperation, enhanced cooperation with other agencies, and State and local assistance have further contributed.

Despite these successes, the resources of criminal enterprises have vastly increased during the past several years.

The DEA 1986 request continues the momentum of the drive against organized crime and drug trafficking. In doing so, DEA continues to stress the Organized Crime Drug Enforcement (OCDE) effort, the elimination of production in source countries, and participation in the administration's intensified interdiction efforts.

This request will provide for the ongoing operation of DEA programs and the recognition of resources required for new initiatives.

Enforcement of Federal Law and Investigations

The Domestic Enforcement program's goal is to reduce the availability of illicit narcotics and dangerous drugs in the domestic marketplace, and to disrupt the drug traffic through the arrest and prosecution of major violators and the removal of their financial assets.

The Foreign Cooperative Investigations program objectives are to motivate and assist foreign countries in the development of drug law enforcement and ancillary programs to reduce the supply of illicit drugs produced, processed, and destined for ultimate delivery to the United States. DEA provides expert advice, authorized investigative and intelligence sharing, and training in those foreign areas deemed most critical to the reduction of drugs destined for the U.S. These activities encourage the development and implementation of substantive intergovernmental enforcement and intelligence exchanges. The on-going base program will be continued.

The Diversion Control activity encompasses the investigation and prevention of the diversion of legitimately produced controlled substances. This includes (a) registering legitimate manufacturers and dispensers of controlled drugs, (b) determining points of diversion into the illicit market, (c) conducting targetted investigations of major violators, (d) conducting periodic investigations of manufacturers, wholesalers, and import/exporters, (e) investigating pre-registrants, (f) scheduling and classifying controlled drugs, (g) authorizing imports and exports, (h) establishing manufacturing quotas, and (i) providing assistance and guidance to the states. Through this program, DEA has been instrumental in persuading foreign governments to control the production and distribution of dangerous pharmaceuticals. The on-going base program which includes resources requested in the 1985 supplemental to administer the Administrative Revocation provisions of the 1984 Comprehensive Crime Control Act, will be continued.

The State and Local Assistance program addresses cooperative law enforcement activities with state, county, and local authorities which benefit the Federal drug enforcement program. Included under this program are training programs for law enforcement officers and forensic chemists, laboratory support for law enforcement agencies, and support for law enforcement activities of the Federal/State and local task forces. The ongoing program will be continued.

Intelligence

Activities include the collection, analysis, and dissemination of drug and drug related information in support of DEA, other Federal, State, and local efforts to interdict or suppress the illicit movement of drugs. This provides a systematic approach to the identification of traffickers and the assessment of their vulnerabilities. It also supplies information for policy determination and enforcement strategy development. An additional dimension of this program is the exchange of criminal drug information between DEA and its foreign counterparts. The on-going base program will be continued.

Research and Engineering

This research program supports the enforcement and intelligence functions through the development of specialized covert equipment, operational engineering, and scientific support.

Support Operations

This program provides (a) laboratory analysis of evidence and expert testimony in support of investigation and prosecution of drug traffickers, (b) training programs for all levels of DEA operational personnel, (c) maintenance of an effective technical equipment program, including aircraft operations, (d) provision of ADP and record management systems, and (e) the provision of responses to requests made under the Freedom of Information and Privacy Acts.

Program Direction

This program provides the overall management and direction of DEA. Included in this program is (a) the development of coordinated and definitive policy, program analysis and planning, (b) budget preparation and financial management, (c) congressional and public affairs, (d) legal counsel, and (e) administrative support functions. The base program will be continued, but with the proposed reduction of 22 positions and $2,225,000 in compliance with the Administration's decision to reduce management and administrative-type functions throughout the Government.

MAGNITUDE OF DRUG PROBLEM

Senator D'AMATO. Mr. Chairman, some of the media characterized the exchanges that some of us had with Attorney General Meese, that I indicated we were not winning the war on drugs. There were some who indicated that I did not feel that we are winning. I would like to think that we have undertaken an active engagement of the enemy; that we have more clearly defined them; that we are in mortal combat; that that has been absent heretofore.

But the reports are still serious; there is a cocaine glut; heroin continues; PCP, something which is manufactured here within this country, angel dust, powers much of the violent crime, and particularly the youth of America are endangered by this.

I just simply believe that we must continue to increase the resources and to use our intelligence community and network if we are going to win that battle. I have just one question, Mr. Chairman, and the others I would ask if I could submit for the record.

Senator RUDMAN. They will be submitted for the record.

USE OF RESOURCES REQUESTED OF OMB

Senator D'AMATO. Mr. Lawn, I have a copy here of the DEA's original budget request submitted to OMB. This request would have provided your agency with significantly more resources than does the current bottom line request. Please tell this committee what you would have done with these additional resources.

Mr. LAWN. Senator D'Amato, as you indicated in your initial statement, when the submission was made, we had anticipated that of the 300 agents included in the submission, the greater majority would have been allocated to the Organized Crime, Drug Enforcement Task Forces around the country and to domestic enforcement operations. I think of the 290 agents requested, 272 special agents would have been utilized in those two critical functions.

Senator D'AMATO. Have those functions of the Organized Crime Task Force been successful? Has this been money well spent, in your opinion?

Mr. LAWN. I think the Organized Crime, Drug Enforcement Task Forces have been most effective. I think they have exceeded the expectations of most, including my own, after 2 years.

Senator D'AMATO. Is that battle line stretched thin? Are your personnel operating, in some cases, around the clock, in some cases, as many as 72 hours without time off?

Mr. LAWN. I think our agent personnel are working extremely hard; I'm really proud of the work that they are doing, but I think that the hours that are consumed in law enforcement are not something recent. We have been doing that for a considerable period of time. I think that comes with the territory.

NEED FOR ADDITIONAL AGENTS

Senator D'AMATO. Is there a need for additional agents in the field with the Organized Crime Task Force?

Mr. LAWN. We are utilizing more agents in the Organized Crime, Drug Enforcement Task Forces than we had been scheduled to use because of the effectiveness of that particular program. Certainly, there are Judicial Districts in this country in which there is no DEA presence, and there are U.S. Attorneys in those districts who are vying for a DEA presence.

However, it is a question of priorities. We know there is a deficit. We know that all of us must do what we can because of the deficit, and we have prioritized the work that must be done against this epidemic of drugs. We believe that in the 1986 budget, we can certainly continue to hold the line.

SENATOR DENTON'S STATEMENT RECOMMENDING ADDITIONAL RESOURCES

Senator D'AMATO. Mr. Chairman, I have here a statement from Senator Denton, whose Subcommittee in the Judiciary Committee, I believe, will be considering the request that I have made in terms of authorizing additional manpower. Senator Denton has asked me to submit his statement for the record.

Senator RUDMAN. That statement will be put in the record of this hearing.

[The statement follows:]

PREPARED STATEMENT OF HON. JEREMIAH DENTON

U.S. SENATOR FROM ALABAMA

At the DEA Oversight and Budget Authorization Hearing for Fiscal year 1986, before the Subcommittee on Security and Terrorism, which I chair, I noted with displeasure our inability in this country to get a firm handle on the drug problem which rends the moral fabric of our society and corrupts the minds of our youth. I also stated that some of our priorities are misplaced in government, considering the amount of resources we apply to different problems. I noted that we allow pitifully little for the war on drugs in comparison with other programs.

In consideration of this, and recognizing the heroic efforts that DEA has made with its limited resources, I am recommending to my Subcommittee, and the full Judiciary Committee, that DEA be expanded in both agent and support personnel. I propose an increase of 500 positions to be divided between agent and support personnel as DEA sees fit. In view of the successes scored by the Organized Crime, Drug Enforcement Task Forces, I would recommend that DEA devote some of its own resources to that program. I am pleased to join with my colleague, Senator D'Amato, in this endeavor.

I realize that money and personnel are not the answer to every problem we face; but I feel that additional resources in the fight against illegal drugs is essential—it is the most appropriate response we can make at this time. And, the war on drugs, save national defense, is the most important responsibility in government today.

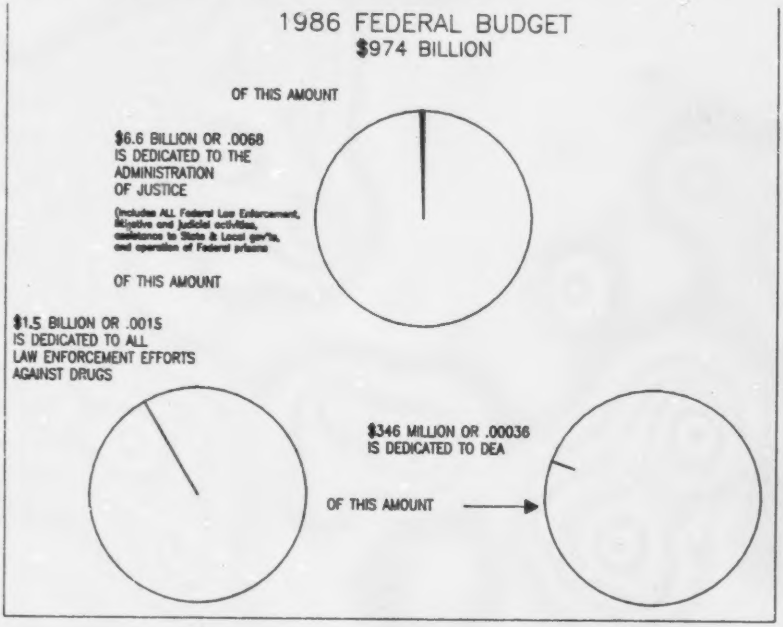
JOB DONE BY DEA AGENTS

Senator D'AMATO. Mr. Chairman, I believe that the DEA and its personnel have done an absolutely heroic job in taking on a battle with limited resources against, in certain cases, a better organized and better financed opponent, the major drug traffickers, who are international in scope. I personally witnessed last week a situation where agents worked 72 hours around the clock. They are dedicated, but they are stretched out. We need more of those resources.

Mr. Lawn, let me commend you for your leadership. I think it has been inspirational. I see the men out in the field. They want to do that job, and I just think it is important that we dedicate more of our resources.

CHART ON NATIONWIDE ALLOCATIONS OF RESOURCES

The chart up here that Senator Denton provided indicates that in terms of nationwide allocations of resources, only one-tenth of 1 percent of all of our Federal budget is being used in the battle against drugs. Mr. Chairman, thank you very much.



Budgetary Chart

USE FOR ADDITIONAL FUNDING

Senator **Rudman**. Senator D'Amato, before you leave, I would put the question a little bit differently, maybe a little bit more directly than Senator D'Amato. That is unusual, because there are usually very few people who ask questions that are more direct than Senator D'Amato.

[Laughter.]

Senator **Rudman**. I would put it this way: if the elected representatives of the people had a different priority than those drones with green eyeshades that sit in the basement of OMB——

[Laughter.]

— and decided to give you another some odd million dollars, maybe somewhere in the $50s, which would fulfill what the original request was, could you use the money usefully—deficits aside—could you use the money usefully?

Mr. LAWN. Senator, let me respond if I could, in this way.

Senator RUDMAN. I would like a very direct answer to that, sir.

Mr. LAWN. Yes or no?

Senator RUDMAN. Yes, I would.

Mr. LAWN. Yes.

Senator RUDMAN. Good.

[Laughter.]

Senator D'AMATO. He is in deep trouble now with OMB.

Senator RUDMAN. I don't think so. He responded to a very direct question as he ought to have.

Senator D'AMATO. Senator, I don't know whether it is your influence that has mellowed me—[Laughter]—or my influence that has sharpened you.

[Laughter.]

Senator RUDMAN. One of the two.

Mr. Lawn, would you like to further expand on that answer?

Mr. LAWN. Yes, I would, Mr. Chairman. We have expressed our concern about the drug problem. We have expressed the successes that we have had in dealing with the drug problem, both domestically and internationally. We have also expressed our belief that this battle will not be won with current resources, nor will it be won in this fiscal year or the next fiscal year.

We think the battle will go on for the next decade, but it is going to require, during the next 10-year period, increased resources, not only in enforcement, but also in education. In giving you the positive answer, I think over the next 10 years, it is going to require considerably more resources.

Senator RUDMAN. We appreciate your directness. We also understand the constraints that you operate under. Obviously, this subcommittee and the Senate must assess its own priorities. There is very strong feeling in the Senate, not only on this committee, but generally, that this is a very high priority.

I would yield to my friend from Florida, Senator Chiles, who, obviously, has as deep a concern about this problem as anyone in the Senate.

Senator Chiles?

USE OF ADDITIONAL RESOURCES REQUESTED FROM OMB

Senator CHILES. Thank you, Mr. Chairman.

It is my understanding, Mr. Lawn, that at DEA, we know you did seek a significant increase for the Crime Enforcement Program, 250 positions and $19,847,000. Would you outline for me some of the actions that you planned to take with this additional manpower?

Mr. LAWN. I will ask Frank to speak to that.

Mr. MONASTERO. I think that as Mr. Lawn indicated earlier, a lot of that would go to, if you are talking about in 1986——

Senator CHILES. Right.

Mr. MONASTERO. The increase in 1986?

Senator CHILES. That is right. What did you plan to do with it?

Mr. MONASTERO. I think as Mr. Lawn indicated, most of that would go into the OCDE program, the Organized Crime, Drug Enforcement Task Forces program. It would have made up what we really had already put into that program and what, in other words, had been diverted from other domestic operations.

Senator CHILES. With respect to the Domestic Enforcement Program, what additional efforts were anticipated in terms of targeting high level trafficking organizations if a significant number of new positions were funded?

I note that you asked for 94 positions and $9.5 million.

Mr. MONASTERO. Yes. Priorities keep shifting, Senator. One of the things we would do right now immediately, if we were in the position of doing this, would be to concentrate more heavily on the organizations which are affecting us out of Mexico, for instance, and those that are affecting us out of Colombia. That would be another area where we really wanted to concentrate, the domestic area. We would probably put a greater emphasis on organizations affecting us from those countries.

OVERSEAS OPERATIONS

Senator CHILES. What is the problem in getting all the DEA offices overseas connected to the NADDIS system? What difficulties are posed for unconnected offices?

Mr. LAWN. We, again, have prioritized the connecting of our overseas offices to the NADDIS terminals, and in many instances, it is a question of finances or in other instances, it is a question of dedicated lines. But each of our overseas offices is on a schedule for this.

Senator CHILES. With Customs officers now being posted in overseas assignments, what steps are being taken to prevent the turf battles that we saw taking place back in the mid-1970's?

Mr. LAWN. About 2 years ago, we initiated an agreement with the Customs Service. We would cross-designate Customs personnel to work in title XXI violations in drug law enforcement and they would give us the names of those personnel. We would cross-designate them for a designated period of time, and this program has been working very effectively for us.

Senator CHILES. Do you think you can do that without getting a renewal of those bylaws?

Mr. LAWN. Yes, sir, I'm sure we can.

Senator CHILES. A recent House Foreign Affairs staff report recommended that DEA offices in South America receive increases in personnel and resources. That would seem essential if an enhanced enforcement strategy is to succeed. In this budget, are any additional resources being requested for the foreign cooperative investigation program?

Mr. LAWN. We are looking at a 10 percent increase of our foreign staffing. However, the only increases we were looking for in the 1986 submission was for the diversion control amendments in the Comprehensive Crime Control Act.

DESIGNER DRUGS

Senator CHILES. The word is out in Miami that a synthetic heroin is out on the streets and may have already resulted in one death. I know DEA has emergency scheduling powers as a result of last year's Crime Control Act. What other steps do you think are necessary to prevent designer drugs from becoming the narcotics problem in the future?

Mr. LAWN. We are following the designer drug issue very closely. We are working very closely with HHS. I think, in fact, today we published the first of the emergency scheduling actions which were authorized in the Comprehensive Crime Control Act. We are following this very closely.

Senator CHILES. Are we not going to have to find some effective way of defining an illegal drug. Now, even if you have 30 days' notice in designer drugs, you change one molecule, and boom, you are off and running again. They tell me they can stay ahead of us forever on that kind of a basis. Aren't we going to have to make some other kind of definition or, if we have to, go after it like we went after machine guns, where you have to license it or you have to do something affirmative so we could make a crime out of this before we try to track the 30 days' notice?

Mr. LAWN. Senator, we are following that very closely in case we need to ask for some legislation to be introduced which would assist us in this area. But it is such a new area, it would be very premature for us to talk in those terms.

Senator CHILES. I have introduced a bill on that. Of course, we are asking the National Drug Enforcement Policy Board, through the Attorney General, to come up and give us some definitions. Certainly, you are going to be called on to do that. We hope to have hearings pretty quickly in the Judiciary Committee on that bill.

We really need to hear from you. This is something I don't think we can allow to get away from us. We know it is in California. It now looks like it is in Florida. It is so simple for them, and given the small amount of dollars needed to set up a lab and the fact that they are even skirting the law right now in doing it, I think we have got to try to get in front of this wave.

Mr. LAWN. Yes, sir. I agree with you, Senator.

Senator CHILES. I thank you, Mr. Chairman. I have some other questions to submit for the record.

NEW JERSEY STAFFING

Senator RUDMAN. They will all be submitted for the record. I would ask my colleagues, Senator Lautenberg and Senator Hollings. I have a bit of a time problem this morning in that we scheduled a number of agencies, and Senator Dole has called a Conference of Republicans at

11:00. I am going to continue the hearing, obviously, but we have fairly limited time. So to the extent that you could submit any questions for the record, I would appreciate it. I don't want you to feel constrained if you have something to ask.

Senator LAUTENBERG. Thank you.

Senator RUDMAN. Not that Senator Lautenberg has ever been constrained.

Senator HOLLINGS. Were you invited?

[Laughter.]

Senator LAUTENBERG. They never include us.

[Laughter.]

Senator LAUTENBERG. On to something serious. For a light moment we escaped it, some of the problems that we have, but they are there. I am from New Jersey, and as you know, we have serious problems throughout our State. You are above the ceiling in terms of personnel. We are glad to see that. The job requires that we have more agents than prescribed. I think 37 is the ceiling for all of New Jersey, and we are operating now with 42. That is my figure.

We have a serious problem in the Camden area, and the surrounding area; that is the western part of our State. New Jersey is small, but nevertheless, when you have to apply the kind of surveillance and review that you do, even a short distance between Camden and Atlantic City is pretty large. Do you know the area?

Mr. LAWN. Yes, sir.

Senator LAUTENBERG. Would it make sense to have a field office in Camden in terms of your ability to operate more efficiently?

Mr. LAWN. Senator, I have to say that we look at these things very, very closely. We have asked our personnel in New Jersey, specifically, the agent in charge in Newark, to give us a continuing assessment of the changing patterns. He has not recommended to us that we open an office in Camden because the traffickers are flexible.

We try to show flexibility working out of the headquarters at our end, but if it were necessary for us to look at something like that, we most certainly would.

Senator LAUTENBERG. You are covering that area, generally, out of Atlantic City right now. Of course, Atlantic City is just growing; money is there and that attracts drug peddlers and drug users.

Are you able to cover all of the responsibilities as you would like to see them with the staffing levels that you have got right now?

Mr. LAWN. Senator, I think we are. We can't forget the fact that the FBI was given concurrent jurisdiction in 1982, and while we have fewer than 40 special agents in DEA in your State, there are probably several hundred FBI agents, many of whom are working in drug law enforcement in New Jersey.

AGENT STAFFING LEVEL

Senator LAUTENBERG. Is the problem growing in New Jersey to your knowledge? I can tell you that it is. It is very serious in the high schools; all of the things that you see in most of the States in the country. I would urge that you review the situation in New Jersey; see what the incidence of arrest is, the incidence of drug-related crime is; even to find out through our State police, our motor vehicle department what the incidence of drug-related driving is. All of those effects would help you in determining what your manpower levels ought to be.

You said in your prepared statement, and I quote you, "Continuing the momentum of our enforcement efforts will depend on continuing willingness to commit the necessary resources and cooperative efforts. Much more needs to be done." That is a quote.

How many agents are on board right now?

Mr. LAWN. 2,210.

Senator LAUTENBERG. 2,210. What is the current personnel ceiling for you?

Mr. LAWN. I believe there are 2,255 agents on board. 2,210 is our current ceiling. We have an agent class in training. By the time the agents in training are prepared to enter the world of drug law enforcement, with attrition, we could have fewer than that.

Senator LAUTENBERG. Is the attrition retirement?

Mr. LAWN. Retirement, in some cases; personnel moving on to other endeavors in others.

MORALE AND PROPOSED PAY REDUCTION

Senator LAUTENBERG. Do people like working for the Drug Enforcement Administration?

Mr. LAWN. I certainly hope so.

Senator LAUTENBERG. It is a tough business?

Mr. LAWN. It is a tough business.

Senator LAUTENBERG. It is made easier with pay cuts, though. I guess. It kind of sharpens the fact, I guess, a little bit.

Mr. LAWN. I don't think, Senator, anyone is in this line of work because of the money.

Senator LAUTENBERG. Right. But they might want to get out of it if there is not some sense of the responsibilities that they undertake, and if the pressure on them is to do more, work harder, take risks—there are plenty out there—and to get less to sustain one's family in the process, that is not very encouraging, either to morale, or ultimately to the high productivity. Isn't that basically it?

NEED FOR ADDITIONAL RESOURCES

Mr. Chairman, in respect of your request, I will not pursue the verbal questions anymore. I will submit written questions.

I salute you, Mr. Lawn, and the job you are doing and your agency. It is commendable. I don't think you have enough people to do the job. The problem grows, maybe exponentially, and we are dealing, arithmetically, with very small numbers in terms of agents.

Senator RUDMAN. Thank you, Senator Lautenberg. I think that you will find that a majority of this subcommittee will agree with that. We already discussed that just before you got here. We discussed the original request, which was substantially reduced by OMB, and asked a very direct question. The Acting Administrator indicated that certainly, additional people could be used productively, and this is something I think the subcommittee will talk about when we eventually get to work in marking this up.

Senator LAUTENBERG. Thank you.

Senator CHILES. If that is your testimony, Mr. Lawn, could you support it?

Mr. LAWN. The question I was asked was yes or no, and I said yes, yes, sir.

[Laughter.]

Senator CHILES. You asked for 300 more, didn't you?

Mr. LAWN. Yes, sir, we asked for about that many new agents in our OMB submission.

INITIATING INCREASE PROGRAMS THROUGH 1985 SUPPLEMENTAL

Senator HOLLINGS. Couldn't we get a start on that in the supplemental? That is just not my own opinion; it is the opinion of the federal judges. I think one of the best ways to control drugs is to get some good hanging judges. I have got a bunch of them. We are running them all back down to Florida now to some extent as a result.

But it is a very, very extensive area to be covered there. Every time I ask the judges what would they have, they feel sorry for the agents with all the cases they are missing and trying to keep up with only eight agents in Charleston. I know you have 21 in Fort Lauderdale, but only eight in Charleston, which is for our whole coastline. I know you have a lot of our kids living in Fort Lauderdale, but those eight are for the whole coastal area of South Carolina that was famed for liquor running back in the prohibition days. That kept the Southern Railroad going, bringing in that liquor.

[Laughter.]

Senator CHILES. Bad liquor.

Senator HOLLINGS. That is true; all kinds of stories were written about it, all the little islands. I wish Peter Dominick was here. His father owned a big island, and that was one of the places to land, up on the beach.

Senator BUMPERS. Were you opposed to that?

Senator HOLLINGS. Yes.

[Laughter.]

NEW AGENT STAFFING FOR SOUTH CAROLINA

Senator HOLLINGS. You just cannot cover the coastal area of South Carolina with only eight. It is just that with an officer in charge—and those fellows know, to your credit—you can't cover all that area with just those people. There is no way to deal with that. I wish you would look at that. What did you have scheduled for the South Carolina coast if you had 300 additional agents?

Mr. LAWN. When we scheduled our priorities, we were scheduling them on the broad-band issues and not on particular geographic areas in the country, Senator, but the agents would certainly go to the areas that are the most vulnerable to drug trafficking, and based upon the coverage, South Carolina would certainly be deserving.

Senator HOLLINGS. Thank you, Mr. Chairman. I will submit the rest of my questions in writing.

Senator RUDMAN. Thank you very much, Senator Hollings.

Senator BUMPERS?

AGENT QUALIFICATION STANDARDS

Senator BUMPERS. Mr. Lawn, what are the qualifications that you use for hiring a DEA agent?

Mr. LAWN. We have a standard set by the Office of Personnel Management. We have become more restrictive than required by the Office of Personnel Management. We are using the same hiring standards that are currently being used by the Federal Bureau of Investigation.

Senator BUMPERS. Does that require a college degree?

Mr. LAWN. Yes, it does.

Senator BUMPERS. Are you flooded with applicants?

Mr. LAWN. Yes, sir, we are.

Senator BUMPERS. Do you have more than enough to choose from?

Mr. LAWN. Yes, sir. We are in the fortunate situation of having many qualified young men and young women who are desirous in assisting the country in this epidemic.

Senator BUMPERS. What kind of training do they get before they get in the field?

Mr. LAWN. We have an extensive basic training course at the Law Enforcement Training Center in Glynco of 12 weeks. Many of the personnel, many of the applicants, in addition, I think about 80 percent of our new agent classes that have gone through in recent years, have prior law enforcement experience, predominantly in the area of drug enforcement.

AGENT STAFFING

Senator BUMPERS. I didn't get here in time for your testimony. How many more agents are you asking for?

Mr. LAWN. We had asked for no additional agents from 1985 through 1986.

Senator BUMPERS. How many do you have?

Mr. LAWN. We have 2,255 agents.

Senator BUMPERS. Do you think that is enough? Or are you dishonoring the President's retrenchment of this program?

Mr. LAWN. No, sir. As I said, this drug battle will be with us for a long time. I would say that we won't see substantial reduction in this country for the foreseeable future, unless over the next few years, considerable resources are given to drug law enforcement; considerable monies; and the commitment continued that we now have from not only the Federal sector, but the private sector and citizen groups in desiring that something be done about this drug problem.

DEA ARRESTS AND CONVICTIONS

Senator BUMPERS. Final question. How many arrests did DEA make last year, and how many convictions did that result in?

Mr. LAWN. The arrest figure, Senator, I would have to submit for the record. We are averaging 1,100 arrests a month, and our conviction figures over the past 3 years have doubled. I think there are 400——

Senator CHILES. From what to what, though?

Mr. LAWN. From 400 a month to, I think, about 900 a month.

Senator BUMPERS. So you are getting 900 convictions out of 1,100 arrests. Would that be a fair conclusion from what you just said?

Mr. LAWN. Yes, sir. Statistically, yes, sir.

Senator BUMPERS. I would like to see a definitive answer to that question for the record, if you don't mind.

Thank you, Mr. Chairman.

[The information follows:]

DRUG ENFORCEMENT ADMINISTRATION

ARRESTS AND CONVICTIONS FY 1980-84

Arrests and convictions reported to DEA Headquarters during the past five fiscal years are shown in the attached table.

An average of nearly 1,100 arrests per month were made in FY 1984, representing a 13-percent increase over the monthly average of FY 1980. More importantly, the number of arrests in Class I cases, which are targeted at the highest level of drug traffickers and organizations, increased by 40 percent between FY 1980 and FY 1984.

Comparing arrests and convictions reported during the same fiscal year is problematic. As noted on the attached table, arrests and convictions for the same fiscal year do not necessarily refer to the same persons; months or years may pass between an arrest and subsequent conviction. Second, reporting quality controls introduced in FY 1983 are responsible for part of the increased convictions for FY 1983 and FY 1984, as compared to previous years. Our improved data base more accurately reflects the true level of convictions resulting from DEA arrests.

DEA field offices have reported 10,000 convictions, over half of them violators arrested in Class I or II cases, to DEA Headquarters during each of the past two fiscal years.

DEA ARRESTS BY GEOGRAPHIC DRUG ENFORCEMENT PROGRAM CLASS OF CASE

	Class case				
	I	II	III	IV	Total
Fiscal year:					
1980	4,084	1,480	3,848	2,142	11,554
1981	4,701	1,783	4,430	2,429	13,343
1982	4,621	1,755	3,901	1,910	12,187
1983	5,246	1,560	4,079	2,116	13,001
1984	5,730	1,653	3,948	1,778	13,107
Percent 1980-84 change	40	12	3	-17	13

DEA CONVICTIONS BY GEOGRAPHIC DRUG ENFORCEMENT PROGRAM CLASS OF CASE

	Class case				
	I	II	III	IV	Total
Fiscal year:					
1980	1,692	676	1,523	1,193	5,084
1981	1,823	717	2,022	1,020	5,582
1982	2,128	848	1,979	985	5,940
1983	3,581	1,301	3,432	1,677	9,991
1984	4,298	1,354	3,392	1,795	10,839

SUBMITTED QUESTIONS

Senator RUDMAN. Thank you very much. I thank my colleagues for keeping the questions short this morning, but there will be a number of questions for the record. I have about a dozen questions which are fairly detailed. We will submit those to you for the record. We will give you ample time to answer them. We appreciate your being here this morning.

Mr. LAWN. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

DRUG ENFORCEMENT ADMINISTRATION

Increased Resources

QUESTION:

The increases requested for next year are only annualizations of the increases mandated this year by the Comprehensive Crime Control Act of 1984 to address the problem of diversion of controlled substances. There are no increases requested for any of your other programs. Why aren't you asking for more resources to continue to improve the excellent record you have achieved over the last few years?

ANSWER:

Certainly there are numerous investigative opportunities which could be pursued with increased resources. The Nation's drug enforcement effort will not be successful without increased resources at all levels. The current level of resource commitment, however, is significant. The infusion of FBI investigative staffing and the staffing from several other Federal law enforcement agencies through the Organized Crime Drug Enforcement Task Forces has made a substantial impact. More can and will be done in the future.

QUESTION:

According to your justification, "the resources of criminal enterprises have vastly increased during the past several years." We know they are also becoming more dangerous. Do you believe we can respond to the new challenges with the same level of resources next year?

ANSWER:

With a careful and vigorous prioritization of the available resources--DEA, FBI, Customs, Coast Guard, the military, and state and local--we will respond to the changing nature of the drug traffic.

Physical Security

QUESTION:

Now that overseas criminal enterprises are retaliating physically against your people what steps have you taken to protect your employees overseas?

ANSWER:

Physical security has been upgraded for all offices, including but not limited to guard service, alterations, and other protections such as intrusion detection and closed-circuit television systems, mail/package X-ray scanning devices, vehicle armoring, secure parking facilities, and emergency communications systems.

The specific steps being taken to provide increased protection for DEA agents stationed overseas are: increased awareness of terrorism; reallocation of staffing to allow the "partner system" of two agents traveling and working together; and specialized terrorism training for new agents being assigned overseas.

Heroin Abuse/Availability

QUESTION:

According to your justification, "overall heroin abuse and availability appears to have increased since October of 1983." Why is the availability on the increase?

ANSWER:

Circumstances which affect the availability of heroin vary by country and geographic region. For this reason, it may be most useful to summarize briefly the nature of the circumstances within the three major supply sources of heroin. The information follows.

Mexico. The current decline of Mexico's socio-economic conditions caused by inflation and devaluation of Mexican currency and corruption has aided well entrenched Mexican heroin trafficking families/organizations to expand their opium cultivation beyond the tradiional cultivation areas of the Sierra Madre Mountains in the States of Durango, Sinaloa and Chihuahua. Favorable weather, improved agricultural technology and plentiful labor has created a "bumper" opium crop in Mexico.

Southwest Asian Heroin. The majority of the heroin refining laboratories are in the northern tribal areas of Pakistan. These tribal chiefs do not totally recognize the Government of Pakistan as the controlling authority. It takes a military action by Pakistan to enter the tribal areas and destroy heroin laboratories. Many of the tribes live in Afghanistan and Pakistan, extending across a common border.

There is no DEA influence on opium production activities in the countries of Afghanistan or Iran.

Southeast Asian Heroin. There is no legitimate government authority that exercises control of opium production in the Golden Triangle area. Insurgency groups exercise control over opium and acetic anhydride smuggling into the heroin refineries along the Thai/Burmese border.

QUESTION:

How are you responding?

ANSWER:

DEA has initiated a Special Enforcement Operation called PRE-LAB. We are tracing the movement of acetic anhydride from the manufacturers to the users. This will identify illicit users of acetic anhydride. We will limit the amount of acetic anhydride available for illicit utilization and track selected shipments to heroin conversion laboratories.

DEA has established a Special Enforcement Operation in Pakistan, HINDU KUSH, to develop intelligence and encourage laboratory and narcotic enforcement action within the tribal areas of the Northwest Frontier Province, particularly within the Khyber Agency. This will enable DEA to guide the Pakistani Government in controlling the heroin production in Pakistan, therefore limiting the supply to the U.S.

QUESTION:

Do you need more resources to help?

ANSWER:

Immediate and ongoing response to the problem is being generated from within our current experienced staff, and we are having an impact. To further enhance our efforts in this and other high priority areas, we are examining, with the Department, strategies for providing additional resources.

Cocaine Oversupply

QUESTION:

According to your justification, "There has been an oversupply of cocaine, with a consequent decline in wholesale prices in selected cities, and recent data show that the decline in price is beginning to show at the retail level." Yet we know your seizures are way up. Does this indicate that the problem is of greater magnitude than anyone originally anticipated?

ANSWER:

The price decline of cocaine was attributable to several factors. While the price was high, trafficking groups in source countries increased coca cultivation and production to meet the increased demand as well as to profit from the escalated prices. The increased production ultimately created a glut in the market which forced prices downward. It does not necessarily mean that current production and availability are of greater magnitude than anticipated, but rather that the increased cultivation and production have produced stockpiles for a number of years and, traffickers' efforts to reduce these stockpiles have resulted in lower prices at the wholesale and retail levels.

QUESTION:

How are you responding to this situation?

ANSWER:

Increased efforts to obtain even greater cooperation from the Governments of Bolivia, Peru and especially Colombia are beginning to show results. As a result of these efforts and a number of internal political factors, including the assasination of the Colombian Minister of Justice, the documentation of drug trafficker ties to rebel-terrorist groups and internal political pressures, the Colombian Government has initiated a crop eradication program and has begun extraditing Colombian fugitives to the United States for prosecution. Peru and Bolivia have also initiated programs aimed at eradication of coca. Meetings have been held with officials of other South American countries including Brazil and Argentina to increase their awareness of the use of these countries for coca cultivation and production of cocaine. Also, DEA continues its efforts to monitor the worldwide movement of ether, the critical precursor chemical for conversion of cocaine base to cocaine HCL. DEA is increasing its staffing in South America and the Caribbean to increase enforcement efforts, train host country officials, and create a presence which will result in maximum cooperation of foreign governments.

QUESTION:

Do you need more resources?

ANSWER:

As noted above, there are numerous opportunities which could be pursued with increased resources. The current level of resource commitment from DEA, as well as other Federal law enforcement agencies is significant, however, and is making a definite impact.

Military Cooperation

QUESTION:

Your justification discusses participation of the military in drug intelligence operations. How do you coordinate with the various branches of the military in an ongoing investigation?

ANSWER:

Initial coordination with the various branches of the military is most always at the headquarters level of DEA and the Department of Defense at the Pentagon. Upon the identification of need for the other's assistance, DOD and DEA headquarters elements first resolve any possible agency conflict with law, or mandate and then proceed accordingly.

QUESTION:

How would you rate the cooperation you have received?

ANSWER:

Cooperation received by DEA from the various branches of the military has been excellent.

QUESTION:

You state in your justification that "foreign supply reduction efforts via eradication have not kept pace with U.S. programs and consequently U.S. cocaine availability continues to escalate." What actions to you recommend the U.S. take to improve the situation?

ANSWER:

Although a number of source countries have initiated eradication programs, these programs have been, to date, conducted on a limited basis. There are any number of reasons for this. The coca cultivation areas are often in isolated locations and are generally well protected. Manual and/or chemical eradication therefore becomes an expensive process. Economics plays an ever constant role with the source countries claiming they cannot afford the costs of manual eradication. Chemical eradication has not been a viable alternative until recently because there was no tested safe and effective herbicide.

The U.S. Government can assist source countries in the development of eradication programs by supplying necessary equipment, including aircraft and helicopters to transport law enforcement personnel and for use in chemical eradication, by supplying technical expertise both in the use of equipment and in the development of viable intelligence and law enforcement capabilities, by supplying tactical intelligence, by advocating and assisting source countries in implementing crop substitution programs and by maintaining diplomatic pressure to assure a proper level of commitment and accomplishment in eradication programs.

QUESTION:

What U.S. governmental agencies are involved in this effort?

ANSWER:

Along with DEA, the U.S. State Department is the primary U.S. Government agency directly involved with eradication. The State Department utilizes assets of other departments including the Department of Agriculture.

QUESTION:

Afghanistan is one of the world's major opium producers. Do you have any evidence that the Soviet occupation forces are participating in the drug trade?

ANSWER:

DEA is not currently in possession of intelligence that indicates the Soviet occupation forces are trafficking in drugs. However, there is intelligence that Soviet occupation forces are using drugs.

State and Local Task Forces

QUESTION:

Your justification calls the Federal, state and local task force program an essential element of the national drug strategy. Several cities have approached the Committee to indicate their desire to establish additional task forces. Each city has expressed its willingness to put up its share of the needed resources. Why aren't you expanding this program?

ANSWER:

DEA presently fully funds 26 State and Local Task Forces. Within available resources, DEA has expanded the program. During the past eighteen months, task forces have been established and funded in seven cities as follows:

Baltimore, Maryland
Honolulu, Hawaii
New Orleans, Louisiana
San Juan, P.R.
Burlington, Vermont
Reno, Nevada
Louisville, Kentucky

In addition to these, funded expansions have taken place in Chicago and Detroit. We also are operating additional task forces where expenses are shared.

QUESTION:

Relative to all your programs, how valuable is the Federal, state and local task force program?

ANSWER:

DEA's State and Local Task Force Program has shown excellent enforcement results. The program is cost efficient and serves as a vehicle for fostering and maintaining a harmonious relationship between state, local and Federal law enforcement officials.

The program has resulted consistently in over 2,000 arrests per year with a very high conviction rate. About 30% of these arrests are in the Class I and Class II case categories.

Joint Investigations-Customs

QUESTION:

Last year, we discussed an initiative whereby Customs agents could investigate drug cases with the permission and under the supervision of DEA. How do you believe this program has worked?

ANSWER:

This program has worked well. When properly utilized, additional manpower as well as investigative expertise of U.S. Customs personnel are significant factors in more effective drug enforcement efforts.

QUESTION:

How often do you deny Customs permission to conduct joint investigations?

ANSWER:

Very rarely, if ever, are requests for joint investigations denied. This is due to the efforts of DEA and U.S. Customs field managers in ensuring that requests for delegation of Title 21 authority are valid and necessary. The usual reason for denial of delegation of Title 21 authority is that the proposed activities of U.S. Customs Agents are not sufficiently oriented toward specific investigative or programmatic goals.

QUESTION:

How many joint investigations were conducted last year?

ANSWER:

On 20 separate occasions, Title 21 authority was requested and approved for U.S. Customs Agents. The number of both U.S. Customs Agents and investigations are significantly greater, as requests often involve multiple agents/investigations. Not counted, of course, are those cooperative investigations where Title 21 authority is not appropriate.

DEA/FBI Merger

QUESTION:

Do you anticipate a merger between DEA and the FBI within the next year?

ANSWER:

The ultimate objective of the Department of Justice is to assure that we have a dedicated, integrated force to effectively deal with the problem of drug trafficking and abuse.

This is an ongoing process that was begun by former Attorney General William French Smith with the delegation to the FBI in January 1982, of concurrent jurisdiction in drug investigations. That process, which is continuing, involves many complex issues and a detailed examination of the benefits and impediments of bringing the two agencies to an eventual merger.

Since January 1982, additional steps have been taken to harmonize and to effect economies between the DEA and the FBI. For example, we already have effected joint contracting, such as in the purchase and maintenance of vehicles, and the DEA and FBI are working toward co-locating their ADP and research and engineering facilities. Additionally, a joint study was concluded in January 1985 to explore the feasibility of relocating DEA's Office of Training from Glynco, Georgia, to the FBI Academy in Quantico, Virginia. A decision on this study is expected shortly.

The DEA and the FBI enjoy an excellent working relationship, characterized by a continuing harmonization of functions and efforts, and an integration of systems that are administrative and supportive in nature.

The command structure, with the Administrator of DEA reporting through the Director of the FBI, has continued to show positive results with no loss of momentum in the investigative effort. Any decision must maintain a clear and dedicated focus on drug enforcement.

Currently, more than 1,000 FBI agents are working full time in investigating drug matters, and there are more than 800 joint drug investigations under way.

QUESTION:

The Committee understands that DEA is considering training its agents at the FBI Academy in Quantico, Virginia, instead of at the Federal Law Enforcement Training Center (FLETC). Has a decision on this matter been made? If so, what is it?

ANSWER:

No decision has been made on this matter.

QUESTION:

Are you dissatisfied with the training provided at FLETC? If so, why?

ANSWER:

The primary purpose of the proposal is to determine the most effective training environment for DEA employees.

QUESTION:

Have you discussed your concerns, if any, with FLETC officials? If so, what was the response?

ANSWER:

Final consideration of this proposal will involve discussion with all affected officials. The Attorney General, the Director of the FBI, and the Acting Administrator of the DEA are scheduled to visit FLETC on May 24, 1985 to discuss this proposal.

QUESTION:

What is the lead agency when you run joint investigations with the FBI?

ANSWER:

The lead agency in any joint investigation is usually the agency with the controlling interest at the point of initiation of the investigation. For example, it is the agency that has reviewed the first information and developed it, or has a cooperating source of information that is willing to cooperate and assist one or both agencies.

The Special Agent in Charge of both agencies concerned with the investigation normally meet and establish a "lead agency" at the onset of this type of investigation.

National Narcotics Border Interdiction System

QUESTION:

Does DEA participate in National Narcotics Border Interdiction System (NNBIS)?

ANSWER:

Yes, DEA headquarters maintains a liaison representation with NNBIS regularly at Washington, D.C. DEA field offices, the headquarters Intelligence program and EPIC all provide pertinent data regarding monthly and quarterly intelligence trends and threat assessments. In addition, major operations such as the most recent "Blue Lightning" in the Bahamas, had DEA headquarters and the Miami Field Division participation in the planning and coordination phases. DEA field offices, Air Wing and EPIC played significant roles in the overall outcome and results obtained in the interagency joint U.S./Bahamian Government program.

QUESTION:

How do you evaluate the effectiveness of NNBIS?

ANSWER:

The NNBIS concept has merit and its potential should be explored and utilized to the fullest measure. Interagency representation and centralized intelligence reporting would allow for creation and expansion of crucial programs to meet changing trends in the traffic. Coordination of programs and action would be in response to foreign government, U.S. Federal, state and local intelligence reporting. This overall intelligence sharing should be coordinated by the Attorney General in his role as chairman of the National Drug Enforcement Policy Board.

Reimbursement for Laboratory Services

QUESTION:

Are you reimbursed for services provided by your state and local laboratory services program? What are you doing to encourage MPDC Washington, D.C. to establish its own laboratory?

ANSWER:

At this time, we are not reimbursed and have no plans to request reimbursement for services rendered to the D.C. Metropolitan Police Department (MPDC) or any other Federal, state, or local agency. In the early days of the DEA laboratories, we did charge for the travel of the expert witness when a case went to court. We found that it cost the then Bureau of Narcotics and Dangerous Drugs (BNDD) more money to process the bills on these cases than it would cost us to do them free of charge.

To prosecute a drug case, one must have the analysis of the material to make sure of its identification. If DEA is to urge state and local agencies to push hard on drug investigations and, at the same time, set up a charge for laboratory work, this may be counterproductive.

DEA has provided many other services to other Federal, state, and local agencies free of charge, including training, technical information, standards, etc. We have helped state and local agencies design laboratories, recommend staffing and equipment, and have indicated to the agencies the workload which might be expected, using the DEA System to Retrieve Information from Drug Evidence (STRIDE).

In 1968, President Nixon directed that the then BNDD provide laboratory services to the MPDC. Each subsequent Administration has continued to support the 1968 directive, and DEA has attempted to fulfill this responsibility to the best of its ability.

We have made arrangements with the MPDC to handle and store their own evidence before and after the analysis by the DEA laboratory. A vault in the DEA laboratory has been given to the District Police and it is staffed by them.

MPDC workload comprises a major portion of the state and local evidence examined by the DEA laboratories, and requires a significant commitment of resources.

Diplomatic Passports

QUESTION:

Do your agents posted overseas have diplomatic passports?

ANSWER:

Generally, agents assigned to embassies have diplomatic passports, but there are certain exceptions such as Bangkok, wherein only DEA's Country Attache has a diplomatic passport and the agent personnel have official passports. Agents not in embassies but assigned to consulates have official passports.

QUESTION:

If not, doesn't this inhibit the freedom of movement?

ANSWER:

No. Their movement is not restricted.

QUESTION:

Have you requested that they receive diplomatic passports?

ANSWER:

Yes. Requests have been made to the State Department but DEA has been advised that its agents do not meet diplomatic standards.

OCDE Task Force

QUESTION:

Why has the FBI assigned more agents to the OCDE Task Forces than DEA (334 FBI, 274 DEA)?

ANSWER:

These allocations stem from the initial decision on the part of Departmental managers in 1983 on the appropriate distribution of the OCDE appropriation. In fact, more workyears are being utilized on the OCDE program than were allocated. A proposed reprogramming is under review which will indicate the correct level of DEA commitment to this program.

Training Programs

QUESTION:

According to your justification, DEA has developed and implemented a two-week Narcotic Specialization training program for selected FBI agents as well as a three-day orientation program for all FBI agents. Where are these classes taught?

ANSWER:

A two-week Narcotic Specialization training program is conducted at Glynco, Georgia.

A two-day orientation program for all FBI agents is conducted at Quantico, Virginia.

Vehicle Purchasing

QUESTION:

Why are you requesting authority to purchase police-type motor vehicles without regard to general purchase price limitation?

ANSWER:

In order to perform vehicle surveillance adequately and in a safe manner, agents must be supplied with units having high-performance engines and heavy-duty cooling, braking and suspension systems, none of which are available within the price limitations of standard government vehicles. In addition, numerous makes and models must be supplied to allow the fleet to blend in with the general vehicle population. Normally, general purchase price limitations are based upon anticipated single make/model fleet acquisitions, which would not meet DEA's specialized requirements.

Airwing Program

QUESTION:

DEA already has an airwing program. Why is the legislative proposal needed.

ANSWER:

This request is not for additional authority. It continues the authority we already have in the 1980 Authorization Act, P.L. 96-132, the last approved authorization for the Department of Justice, and which is being continued currently in the 1985 Appropriations Act, P.L. 98-411.

Wiretaps

QUESTION:

According to the FY 1985 budget justification, the number of Title III wiretaps for 1984 was approximately 80. How significant have the results been from using wiretaps? How important are they to investigations for drug traffickers?

ANSWER:

For 1984, there were a total of 391 narcotic-related Title III investigations by DEA and the FBI. In 117 of these DEA was the primary agency, and 179 were conducted jointly.

This investigative tool continues to be an extremely valuable technique and is generally implemented when an investigation cannot be further penetrated through normal avenues.

The use of Title III provides the means to infiltrate an organization by identifying intended recipients of controlled substances; identifying members involved in distribution; financing of the narcotics distribution network; and identifying the assets and methods used to deliver, store and distribute narcotics. As you know, many organizations upper echelons are insulated by mid-and lower-level distributors who are either family members or long standing trusted friends. These violators are often untouchable because they remove themselves from the day-to-day direct contact with lower level members. Title III investigations have enabled us to gain the necessary evidence to arrest and prosecute successfully the heads of major organizations and their other members.

FBI Involvement in DEA Task Forces

QUESTION:

With the FBI now having concurrent jurisdiction for the enforcement of Federal drug law, has any consideration been given to involving the FBI in DEA's 26 Federal, state and local task forces located throughout the United States? Inclusion of the FBI could enhance the task force effort and present a more unified Federal image.

ANSWER:

Since the inception of the Federal/State and Local Task Force Program, DEA has been the lead agency in the funding and management of the program. The intent is to increase state and local law enforcement involvement and participation in the national effort against drugs. Direct FBI involvement is not considered to be essential and, in fact, could be viewed as duplicative of DEA's role.

Satellite Scanners

QUESTION:

As part of its research programs, DEA in 1984 initiated an operational systems test of earth-orbiting satellite scanners for the location of illicit cannabis cultivation. Was the test successful? If it was successful, are there any plans to use the scanners for cannabis detection in the U.S. and elsewhere in the near future?

ANSWER:

DEA continues to participate with all members of the scientific community in evaluating various aspects of satellite technology, but to date, accurate location of illicit cannabis cultivation has been most effective at aircraft level (low-flying) altitudes.

1985 Supplemental

QUESTION:

In the FY 1985 supplemental, DEA is requesting 156 more positions for the Administrative Revocation program (passed on October 12, 1984, as part of the Comprehensive Crime Control Act). DEA states that these positions will provide for 690 additional investigations, which will in turn result in 550 additional revocations, suspensions, denials or surrenders for cause. How did DEA come up with the numbers for new positions, additional revocations, suspensions, denials or surrenders for cause?

ANSWER:

The 156 positions include 126 investigator positions to conduct administrative revocation investigations.

Of the 680,000 DEA registrants, it is estimated that approximately 12,000 are involved in activities which are in violation of the Controlled Substances Act. It is further estimated that of the 12,000, approximately one-half, or 6,000, may be appropriate subjects of administrative revocation investigations whereby a DEA registration can be revoked, suspended, denied, or surrendered for cause if it is determined that the issuance of such registration would be inconsistent with the public interest. This action can now be taken without a criminal conviction on drug-related felony charges.

Prior to taking such action, however, DEA investigators must gather prescription data, sales data, patient statements and expert testimony for use in "show cause" proceedings. DEA's best estimates indicate that during the first year of this program, approximately eight investigations can be conducted per year per investigator. It is anticipated that the number of investigations will increase upon full implementation and subsequent refinement of the program.

It is recognized that with an additional 126 investigators DEA will not be able to take full advantage of this new authority in terms of taking administrative revocation action pursuant to all significant practitioner controlled substance violations, derogatory state licensing actions and criminal convictions. However, DEA has conservatively estimated that the minimum requirement to implement this program is 126 investigators. By the end of FY 1986, DEA will have had the benefit of one year's experience with this new program and will be in a far better position to determine accurately the total resource requirement needed to take full advantage of this new authority.

It is estimated conservatively that approximately 82% of the investigations conducted will result in a revocation, suspension, denial, or surrender for cause of a DEA registration.

Designer Drugs

QUESTION:

According to testimony presented to the President's Commission on Organized Crime in February 1985, new synthetic street drugs have been introduced into the illicit drug market. These drugs can be created by simply modifying the chemical structure of a controlled substance drug, thus transforming it into a new, more potent "designer" drug. The emergence of "designer" drugs was recently mentioned on one network telecast.

How widespread is the "designer" drug phenomenon?

What is DEA doing to control the production and distribution of "designer" drugs?

What problems does DEA face in controlling "designer" drugs?

ANSWER:

The term "designer drugs" refers to clandestinely produced, noncontrolled substances, which are structurally and pharmacologically similar to controlled substances. The concept of producing analogs of controlled substances in an effort to circumvent the Controlled Substances Act (CSA) is not new (e.g., PCP analogs, halluciogenic amphetamines, MDA, MMDA, MDMA). The application of this concept to the production of analogs of potent narcotics has occurred only within the past five years on the West Coast.

At the present time, reports about designer drugs focus on analogs of the Schedule II narcotic analgesics, fentanyl (Sublimaze), and, to a lesser degree, meperidine (Demerol). Both fentanyl and meperidine are produced synthetically and there are many variations of each which may produce heroin-like effects.

Since 1980 there have been six analogs of fentanyl identifed in the illicit drug traffic. They have been associated with at least 90 overdose deaths, with more than half of these occurring since January 1984. The distribution of fentanyl analogs appears confined to the West Coast, particularly the San Francisco Bay area, San Diego and, to a lesser degree, Los Angeles. DEA has no evidence that these substances are spreading to other areas of the country at this time.

Two analogs of meperidine have been identified by DEA laboratories since 1982. A by-product (MPTP) formed in the synthesis of one of these analogs (MPPP) produced Parkinson's disease in at least seven users in 1982. Information exists which suggests that MPPP/MPTP may again be available in California, but this has not been confirmed. Again, availability of the meperidine analogs appear confined to California.

Presently, fentanyl and its analogues are confined mainly to the San Francisco Bay area. The Demerol analogue, MPPD, is confined basically to the San Jose, California, area.

In 1984, there were six overdoses in Portland, Oregon, reported by the Portland coroners office with two deaths as a result. In October 1984, during the seizure of a major PCP laboratory in Brownsville, Texas, the suspects were attempting to synthesize another non-scheduled Demerol analogue. In 1984, a fentanyl analogue believed to be methyl fentanyl was purchased in Brooklyn, New York, by the DEA Task Force.

DEA has used both its traditional scheduling authority (alpha-methylfentanyl, 9-81) and its newly enacted emergency scheduling authority (3-methylfentanyl, 4-25-84) to place two of the "designer drugs" into Schedule I of the Controlled Substances Act (CSA). 3-methylfentanyl is the most potent of the available "designer drugs" and has been associated with a majority of the overdose deaths attributed to "designer drugs" since 1984. DEA is currently gathering evidence in support of the scheduling, emergency or traditional, of other fentanyl and meperidine analogs. With the control of these substances, as well as fentanyl, which is present as an impurity in some of these substances, DEA will be able to pursue criminal investigations aimed at prosecuting those responsible for the production and distribution of these fentanyl analogs. In October 1984, DEA seized a PCP laboratory which was operated by the same individuals who were suspected of producing MPPP/MPTP in 1982. A methamphetamine laboratory was seized in April 1985 which had most of the chemicals necessary to synthesize MPPP.

A substance must be listed in one of the schedules of the Controlled Substances Act (CSA) before DEA can investigate anyone engaged in the manufacturing or distribution of such substances. The problems in scheduling the "designer" drugs center around the need to identify rapidly the specific chemical substance that is being trafficked and abused and to obtain biological data to determine the pharmacological effects of each substance. There are many variations of the fentanyl and meperidine molecules, each a unique substance which may or may not retain the pharmacological activity of the parent compound. In the case of fentanyl analogs, the quantities necessary to produce a desired effect are very small, and thus identification of newly abused analogs may be difficult. Further, there is no biological data available for some of the fentanyl analogs encountered. The activity may be extrapolated from that of similar compounds and used until actual pharmacological testing can be done. The above efforts may take time and in some cases may allow the clandestine chemist to produce other analogs to circumvent the CSA. The recently enacted emergency scheduling provisions enable DEA to speed up the scheduling of the "designer" drugs by reducing the amount of data necessary to schedule a substance, and by eliminating the need for a scientific and medical evaluation of the substance by the Department of Health and Human Services. This emergency authority alleviates many of the previously mentioned problems.

Information Sharing

QUESTION:

One of the objectives stated in DEA's budget submission is "to increase the sharing of strategic and tactical investigative information between the DEA, the FBI, and other Federal agencies on narcotics and drug investigations."

What accomplishments have there been to date that increased the sharing of such information between DEA and the FBI? Describe and provide documentation. Considering Departmental efforts to link FBI and DEA activities, has there been increased sharing of information technology resources, specifically data center hardware, software, and telecommunications networks? Describe and provide documentation to support your response.

ANSWER:

In terms of strategic intelligence, the FBI receives copies of all periodic reporting of this nature published by DEA. Additionally the FBI is on the distribution list for extracts from DEA investigation reporting and the Intelligence Information Report series.

DEA and FBI information systems and telecommunications networks will be integrated on a selective basis where improvements in efficiency and effectiveness can be realized while satisfying security and operational requirements.

It is planned that those DEA investigative support systems which will contain national security information will be operated on computer hardware systems located in the FBI Computer Center. This will give DEA a secure information processing capability, and will significantly increase the benefits realized by FBI-DEA automation resources.

DEA has and will continue to operate its own telecommunication network. We intend to take advantage of the FBI communication lines in the same way we make use of the Department of State (DOS) network to reduce the cost of the DEA overseas ADP program.

The FBI has initiated an agreement with the Institute for Defense Analysis to develop a turnkey system for DEA's El Paso Intelligence Center (EPIC) which will apply artificial intelligence and integrated data base technology to support DEA's drug interdiction efforts.

DEA has placed a DATS terminal at FBI Headquarters to allow access to the Narcotics and Dangerous Drugs Information System (NADDIS).

Extensive technical information has been provided to the FBI regarding the Text Analysis System to be installed at EPIC.

DEA ADP/Telecommunications budget plans are reviewed in depth with the FBI to ensure that no duplication of effort on systems are planned.

DATS

QUESTION:

The budget submission states that "DEA will not be able to backup the DATS system at the Justice Management Center in times of catastrophic failures... or unscheduled downtime". Has DEA experienced such system failure? If so, please describe and provide supporting documentation. Describe existing systems backup capabilities and their effectiveness.

ANSWER:

To insure that the law enforcement data bases are not irretrievably lost due to a catastrophic failure or event, or are not unduly inaccessible because of downtime, it is necessary that the Department maintain a backup to the primary computer. To insure that the data bases are available to DEA investigators on a 24-hour-a-day basis, the backup site must be kept in a ready state. DEA is required to maintain the backup capability on a current basis which includes testing a contingency plan periodically, and providing liaison between DEA and the backup site. Planning is underway to use the new Department Dallas facility as a backup site.

There have been periodic instances of downtime on the Department computer attributable to a variety of reasons, such as planned maintenance and electrical or air conditioning outages. These instances result in the inability of investigators to secure the data they need in a timely manner and can affect the development of cases adversely.

Data Communications Network

QUESTION:

DEA's budget request describes 1985-86 plans for maintaining and improving its data communications networks. Considering the fact that funding is not requested for DOJ's consolidated telecommunications network in FY 1986, will DEA require enhancements and, or extensions of its data network? If so, describe and provide support documentation.

ANSWER:

DEA has a working telecommunications network. In our office automation project we can accommodate either the DOJ or FBI approach. DEA is actively contributing to the design efforts of both the DOJ and the FBI telecommunications networks. Enhancements or extensions of the DEA's network are not related to the funding for the Department's consolidated Justice Telecommunications Network.

QUESTION:

Is any portion of DEA's ADP and telecommunications support provided through the Drug Task Force? Describe that support, if any, and its attendant funding levels. If DEA ADP and telecommunications are not being funded through the Task Force for FY 1986, please describe where within the DEA budget, funding for services previously provided with Task Force monies has been absorbed.

ANSWER:

The significant increases for ADP provided in the OCDE appropriation were to upgrade overall ADP capabilities to meet the additional demand brought on by the increased Drug Enforcement program activity. DEA has not reduced the amount of the ADP funding provided in the program.

QUESTION:

DEA describes an Office Automation project that is expected to cost over $25 million during the next five years. The project appears to require communications capabilities. Which network(s) will support this project? What portion of the total cost of the project is for telecommunications? Has DEA prepared a cost/benefit analysis of this project? What savings and/or efficiencies are expected to result? Provide copies of documentation to support your response.

ANSWER:

The Office Automation project is in response to the deficiencies in DEA's current capabilities identified in a study by the U.S. Air Force Federal Computer Performance Evaluation and Simulation Center (FEDSIM). The report "DEA Requirement Analysis" dated February 1983, was subsequently validated by the Office of Personnel Management (OPM) automation group and the Department of Justice. DEA expects to realize many efficiencies resulting from the Office Automation project. These include source data collection, electronic mail, local data processing capabilities, bar code inventory system for DEA property and drug evidence, high speed line printer, local statistics and graphics.

The $25 million referred to in the above question appears to be the sum which would have been required for the first two years of the "Full Encryption and Tempest System" initiative, an enhancement to DEA's Office Automation project. The DEA Office Automation project will require a network, and DEA plans to use the existing DEA Network with certain modifications to be determined by the implementing contractor. The network cost is estimated at $2,200,000 per year.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

DRUG ENFORCEMENT ADMINISTRATION

1986 Resources

QUESTION:

Mr. Lawn, in your statement you make the point that "continuing the momentum of our enforcement efforts will depend upon a willingness to commit the necessary resources and cooperative efforts."

According to a chart supplied the Subcommittee, DEA has 2,255 agents now on board, or 25 more than the ceiling. That would imply that DEA plans to cut agents to get down to the level budgeted for 1986. What does that say about "a willingness to commit the necessary resources to drug law enforcement"?

ANSWER:

There is no reduction in agent staffing planned for 1986. The current on-board staff includes a new basic training class. As retirements take place, the on-board staffing will be reduced.

QUESTION:

How much did DEA request of the OMB and of the Justice Department in terms of positions and funds for FY 1986?

ANSWER:

The request to the Department of Justice was for $533,712,000 and 6,050 total positions, including 569 additional agents.

The request to the Office of Management and Budget was for $391,803,000 and 4,946 total positions, including 290 additional agents.

QUESTION:

How would DEA have assigned those additional agents, who, presumably, will not be able to be assigned at the 2,230 level?

ANSWER:

The additional agents would have been assigned as follows:

Domestic Enforcement field investigations	72
Organized Crime Drug Enforcement program	200
Foreign Cooperative Investigations program	6
DEA Training program	5
Air program	7
Total	290

QUESTION:

At the time of our hearing on March 10, 1982, DEA has 1,872 agent positions of which 1,853 were filled. As of March 31, 1985, DEA has 2,230 agent positions, of which 2,255 were on-board. Please provide for the file a comparison, by location, of the agents on-board then and now?

ANSWER:

The attached chart displays the requested information.

DRUG ENFORCEMENT ADMINISTRATION
Special Agent On-Board Levels
Comparison: February 1982 and March 1985

Domestic Offices

	2/28/82	3/31/85
Atlanta, GA	26	38
Charleston, SC	3	8
Columbia, SC	3	4
Columbus, GA	-	2
Greensboro, NC	6	5
Knoxville, TN	-	1
Memphis, TN	3	3
Nashville, TN	5	3
Savannah, GA	3	4
Wilmington, NC	5	5
Boston, MA	38	50
Bridgeport, CT	2	5
Burlington, VT	3	2
Concord, NH	1	2
Hartford, CT	13	13
Portland, ME	3	4
Providence, RI	2	3
Springfield, MA	2	4
Chicago, IL	87	90
Fargo, ND	2	2
Hammond, IN	5	7
Indianapolis, IN	9	9
Milwaukee, WI	6	6
Minneapolis, MN	2	9
Springfield,	2	3
Dallas, TX	39	32
Alpine, TX	2	2
El Paso, TX	14	14
Ft. Worth, TX	5	4
Lubbock, TX	1	1
Midland, TX	2	-
Oklahoma City, OK	3	5
Tulsa, OK	1	2
Denver, CO	25	26
Albuquerque, NM	15	17
Cheyenne, WY	2	3
Glenwood Springs, CO	-	1
Las Cruces, NM	5	2
Salt Lake City, UT	4	4
Detroit, MI	57	69
Cincinnati, OH	4	6
Cleveland, OH	7	10
Grand Rapids, MI	3	5
Louisville, KY	2	7
Saginaw, MI	-	2
Houston, TX	26	56
Austin, TX	12	11
Brownsville, TX	8	8
Corpus Christi, TX	10	4
Del Rio, TX	5	-
Eagle Pass, TX	3	3
Galveston, TX	5	5
Laredo, TX	8	5
Mc Allen, TX	23	23
San Antonio, TX	23	19
Los Angeles, CA	92	90
Guam	2	1
Honolulu, HI	11	12
Las Vegas, NV	9	9
Reno, NV	5	6
Riverside, CA	-	7
Santa Ana, CA	-	7
Santa Barbara, CA	-	6
Miami, FL	112	145
Ft. Lauderdale, FL	15	19
Ft. Myers, FL	3	3
Gainesville, FL	-	3
Jacksonville, FL	7	8
Key West, FL	2	-
Marathon, FL	-	4
Orlando, FL	-	2
Panama City, FL	4	6
San Juan, PR	16	15
Tampa, FL	6	11
West Palm Beach, FL	8	5
Newark, NJ	20	31
Atlantic City, NJ	5	6
New Orleans, LA	29	43
Baton Rouge, LA	4	4
Birmingham, AL	3	2
Jackson, MS	3	4
Little Rock, AR	5	7
Mobile, AL	6	7
Shreveport, LA	2	2
New York, NY	205	242
Albany, NY	2	7
Buffalo, NY	7	8
Long Island, NY	6	10
Rochester, NY	1	5

	2/28/82	3/31/85
Philadelphia, PA	29	43
Harrisburg, PA	-	3
Pittsburgh, PA	9	10
Wilmington, DE	2	2
Phoenix, AZ	15	24
Douglas, AZ	3	-
Nogales, AZ	4	3
San Luis, AZ	6	-
Tucson, AZ	17	14
Yuma, AZ	-	3
San Diego, CA	48	56
Calexico, CA	9	8
Tecate, CA	-	2
San Francisco, CA	40	47
Fresno, CA	6	9
Sacramento, CA	11	14
San Jose, CA	-	3

	2/28/82	3/31/85
Seattle, WA	36	34
Anchorage, AK	3	2
Blaine, WA	3	3
Boise, ID	3	3
Eugene, OR	4	5
Great Falls, MT	2	3
Portland, OR	8	7
Spokane, WA	3	3
St. Louis, MO	17	25
Des Moines, IA	2	3
Kansas City, MO	9	9
Omaha, NB	2	3
Sioux Falls, SD	2	2
Wichita, KS	2	2
Washington, DC	23	32
Baltimore, MD	35	39
Charleston, WV	1	3
Norfolk, VA	5	6
Richmond, VA	4	5
Total Domestic Offices	1,498	1,795
El Paso Intelligence Ctr.	13	22
Addison Air Wing	37	47
Basic Agent School	-	37
Subtotal	1,548	1,901
Headquarters Activities including training	147	170
Foreign	158	184
Grand Total	1,853	2,255

QUESTION:

If Congress were going to appropriate additional resources for the Drug Enforcement Administration in 1985, how much could you effectively use and for what purposes (assuming July passage of a supplemental appropriation)?

ANSWER:

The Drug Enforcement Administration and the Department are currently examining options relating to security costs, communications enhancements and increased staffing overseas, which DEA could utilize effectively this fiscal year.

Impact of Five Percent Pay Cut

QUESTION:

Your budget proposal includes a projected decrease of $5,678,000 for a five percent cut that will not be approved by Congress. What will be the impact on workyears and by program of absorbing this amount?

ANSWER:

If the $5.7 million is not added back in, we will have to absorb it from current operating funding. The five percent pay reduction represents approximately 1.6% of the total appropriation request. To absorb that amount would require, in the short run, selective reductions in payroll costs, such as for overtime and other than full-time positions and day-to-day operating costs. As an alternative to the pay cut, the administration reached agreement with the Senate that it will no longer insist on a five percent pay reduction in FY 1986 if alternative savings included in the Budget Resolution provide for substantial Government-wide work force and management reforms including hiring limitations, deferral of within grade and merit pay increases for one year and recomputation of salaries on the basis of 2,087 hours instead of the current 2,080 hour workyear.

Since the Congress may use the five percent pay cut savings to meet the Budget Resolution reductions, it would be inappropriate to add back fund related to the five percent pay cut.

Drug Problem in Tarrant County, Texas

QUESTION:

Last month the mayors of Ft. Worth, Arlington, and Hurst, Texas, came to my office to outline the drug problem in Tarrant County.

Am I correct the DEA has suggested that a Federal-state-local task force be established to deal with this situation?

ANSWER:

DEA and the police departments in Fort Worth, North Richland Hills, Arlington, Bedford, Hurst, and Euless, and the Tarrant County Sheriff's Office are in the process of preparing cooperative agreements to establish a Federal/State and Local Task Force to meet the escalating drug trafficking situation in the area.

QUESTION:

The mayors indicated that DEA requires $300,000 for this task force. Can't you find that amount within your overall appropriation of almost $330,000,000?

ANSWER:

During 1985, we have had to make some very difficult resource allocation decisions, including a reallocation of $7 million for equipment of on-going operational needs. Further there have been unanticipated requirements for security enhancements. However, DEA is in the process, within currently available resources, of establishing a state and local task force at Fort Worth.

QUESTION:

How many other areas could effectively use such a task force to combat the flow of illegal drugs? Are any of those areas in South Carolina?

ANSWER:

During 1983, DEA evaluated the informal task forces for possible formalization and funding. Those selected by DEA as in critical need of funding, and which have as yet not been funded are:

Seattle, Washington
San Antonio, Texas
Tucson, Arizona
Savannah, Georgia
Cincinnati, Ohio
Wilmington, North Carolina
Wichita, Kansas
Charleston, West Virginia

We are currently examining this program and the options for expansion to a number of other areas.

QUESTION:

How much did DEA originally request for state and local assistance for 1986?

ANSWER:

The request to the Department of Justice was for $28,172,000 and 259 total positions for all state and local assistance programs.

The request to the Office of Management and Budget was for $17,093,000 and 170 total positions for all state and local assistance programs.

Sports Drug Awareness Program

QUESTION:

It is indicated in the statement submitted for the record that the National Football League is involved in the sports drug awareness program. Drugs have also infiltrated other sports, particularly baseball and basketball. Do you plan to include athletes in sports other than football in your program?

ANSWER:

The DEA Sports Drug Awareness Program was developed in conjunction with the National High School Athletic Coaches Association, the International Association of Chiefs of Police, the National Football League and the NFL Players Association. In addition to the FBI and the Office of Juvenile Justice and Delinquency Prevention, the National Basketball Association, the National Hockey League and the Baseball Commissioners Office have also become participating members of the program.

As you know, the goal of this program is to prevent drug abuse among school age youth, with special emphasis on the role of the coach and the student athlete. We want to reach 48,000 men and women coaches initially in 20,000 high schools across the country who can, in turn help us reach the 5.5 million student athletes. These athletes participate in all types of sports offered to school age youth.

The program is not limited to football player involvement.

QUESTIONS SUBMITTED BY SENATOR INOUYE

DRUG ENFORCEMENT ADMINISTRATION

Marijuana Eradication

QUESTION:

According to 1983 DEA eradication statistics, the State of Hawaii ranked second in the nation in terms of marijuana plants eradicated (579,082) and first in terms of marijuana plots sighted (62,652). The value of Hawaii's domestic marijuana crop has been said to exceed $3 billion.

Pursuant to this committee's request, the DEA has reported on its cooperative activities in Hawaii and I was most pleased to note the extent of such efforts. However, there can be no question that despite current efforts there remains marijuana cultivation in Hawaii on a scale virtually unmatched in the United States.

By what means, if any, does the DEA plan to increase the degree or effectiveness of its participation in marijuana eradication activities in Hawaii?

ANSWER:

The 1984 DEA eradication statistics again showed Hawaii ranked second in terms of cultivated marijuana plants eradicated (447,778) and first in terms of marijuana plots sighted (7,371). The 1984 DEA funding support to the eradication effort in Hawaii was approximately $186,600.

QUESTION:

More specifically, there appears to be a consensus among those involved that the most significant single need in Hawaii is access to helicopters to provide the local police with additional opportunities for aerial surveillance. The Administration's *1984 National Strategy for the Prevention of Drug Abuse and Drug Trafficking* notes that the "DEA coordinates the National Marijuana Eradication and Suppression Program which promotes information sharing and provides training, equipment, investigative and *aircraft support* to state and local enforcement officers."

To what extent has the DEA provided such support to local law enforcement in Hawaii particularly with respect to aircraft support? And what plans, if any, does the Agency have to enhance the provision of such support?

ANSWER:

DEA has recognized the significance of Hawaii as a major marijuana cultivation area. Based on 1985, the funding level for Hawaii has been increased to $260,000 - a 42% increase over 1984, of which a substantial amount is for aircraft lease. The National Guard and Police Departments provide additional aircraft support.

Questions Submitted by Senator D'Amato

DRUG ENFORCEMENT ADMINISTRATION

Increased Resources

QUESTION:

Mr. Lawn, I have here a copy of DEA's original budget submittal to OMB. This request would have provided your agency with significantly more resources. Please tell this committee what you would have done with those resources.

ANSWER:

A summary of the requested increases follows:

Program Increases:	OMB		
	Pos.	Agents	Amount ($000)
Domestic Enforcement	94	72	$9,517
Field Investigations:			
(a) Multi-drug trafficking organizations			
(b) Special Action Office for Cocaine			
(c) Heroin trafficking organizations			
OCDE Expansion	250	200	19,841
Foreign Cooperative Investigations	10	6	1,303
Diversion Control:			
Technicians	19	...	463
State Assistance:	12	...	370
(a) Compliance technicians for Regulatory program			
(b) Liaison with State agencies			
Intelligence			
National Intelligence estimates:	16	...	2,064
(a) Improve quality of information			
(b) Enhance EPIC			
DEA Laboratory Services			
Forensic Support/determination of source:	20	...	275
Non-chemist positions to free chemists for analytical work			
DEA Training	10	5	1,033
Rotational and specialized training programs			
Technical Operations			
Air program:	9	7	4,819
2 replacement helicopters; 7 pilots			

	OMB		
Program Increases:	Pos.	Agents	Amount ($000)
Communications and investigative equipment: Tracking devices, audio kits	19	...	1,380
ADP Telecommunications: (a) Security of systems (b) Encryption devices; systems modifications	20	...	10,483
State and Local Task Forces	...	...	...
Other Support Workload related increases	29	...	996
Total Enhancements	508	290	52,544

Agent Workload

QUESTION:

I have heard from the agents in the field that they are being worked to their limit, and beyond. They work three days at a time without any sleep. We are so short of agents that if we devote resources to one area, we shortchange another area. After we've seized the drugs and made the arrests, it's a serious drain to pursue the forfeitures and the financial aspects. Do you hear these same complaints?

ANSWER:

Our agent personnel work extremely hard; we are proud of the work that they are doing, but the hours generally consumed in law enforcement efforts are nothing new. We have been doing that for a considerable period of time. It comes with the territory.

Workyear Increase

QUESTION:

OMB's reduced budget request talks about an increase of $9 million and 107 workyears at the same time it says there will be a decrease of 22 positions. I want to make it clear for the record that the so-called "workyear" increase does not mean we are hiring more agents. Doesn't that increase relate to drug diversion investigations, and isn't that increase due to the supplemental appropriation Congress passed last year?

ANSWER:

Yes, the great majority of this increase is for the annualization of the currently pending 1985 supplemental request to implement the Administrative Revocation Program enacted in the Crime Control Act of 1984. This increase will permit compliance investigators hired in 1985 to be funded for the full year in 1986. The net increase of 107 workyears in the 1986 budget submission breaks down as follows:

Workyears	Reason
+117 increase	Annualization of 1985 pending program Supplemental for Diversion Control
+12 increase	Other 1985 annualizations
-22 decrease	Administrative reductions

+107 net increase in workyears for 1986.

Long Island Drug Enforcement Task Force

QUESTION:

How many DEA agents are assigned to the Long Island Drug Enforcement Task Force today? How does that number compare to the number at the time you decided it needed to be reorganized?

ANSWER:

Three DEA agents are presently assigned to the Long Island State and Local Task Force compared to five prior to its reorganization.

The agencies participating and personnel assigned to the Long Island State and Local Task Force are as follows:

1 DEA Supervisor
2 DEA Special Agents
3 Nassau County Police Officers
3 Suffolk County Police Officers
1 Nassau County District Attorney Investigator
1 Suffolk County District Attorney Investigator
2 New York State Police Troopers

New York Joint Task Force

QUESTION:

Is it true that New York State is adding personnel to the New York Joint Task Force? How many personnel are the various Federal, state and local governments contributing to the task force?

ANSWER:

We are advised that the New York State Police is planning to assign 200 officers to their Narcotic Enforcement Unit. It is probable that a portion of the state troopers will be assigned to the New York Joint Task Force. However, at the present time no commitment has been made. The personnel currently assigned is as follows:

34 DEA Agents
75 New York City Police Department Officers
25 New York State Police Officers
134 Total

Dangerous Drug Squad

QUESTION

Does the New York Division of DEA have a "Dangerous Drugs Squad"?

ANSWER:

No. Due to the large amount of trafficking in heroin and cocaine all available manpower is targetted towards these drugs. If investigative leads pertaining to dangerous drugs are provided to the New York Division assignments are made for follow-up investigation.

QUESTION:

Do such squads exist in other parts of the country?

ANSWER:

The Washington Division has a PCP task force. Other cities, such as Los Angeles, have a dangerous drugs coordinator or "point of contact."

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FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF HON. WILLIAM H. WEBSTER, DIRECTOR FEDERAL BUREAU OF INVESTIGATION

ACCOMPANIED BY:

WILLIAM LEE COLWELL, EXECUTIVE ASSISTANT DIRECTOR ADMINISTRATION

THOMAS A. HUGHES, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT BRANCH, ADMINISTRATIVE SERVICES DIVISION

BUDGET REQUEST

Senator RUDMAN. The next request we will review is that of the FBI. For fiscal year 1986, the Bureau's submissions total $1,185,664,000. Appearing on behalf of the FBI is its Director, the Honorable William Webster.

Judge Webster, we are very pleased to have you with us again today and you will proceed with what I understand is already a brief summary of your opening statement. Then we will go over questions for the record.

Mr. WEBSTER. Thank you. Mr. Chairman, it is a pleasure to appear before your subcommittee, and I want to recognize and thank you and the other members of the subcommittee for your support of the FBI.

Mr. Chairman, pending before your subcommittee is a mixture of increases and decreases to the resources of the FBI with which we operate today. The increases address the expanding responsibilities being levied upon the FBI, while the decreases recognize the fiscal environment of today.

SUPPLEMENTAL REQUEST

With regard to the increases, first, before your subcommittee is a supplemental request for this fiscal year, fiscal year 1985, for 96 agents and 52 support positions and $1.5 million to carry out provisions of the Comprehensive Crime Control Act of 1984. This act increases the responsibilities and, consequently, resource requirements of the FBI in its organized crime, white-collar crime, and domestic terrorism programs and in the enforcement of our seizure and forfeiture of assets authorities.

FISCAL 1986 BUDGET REQUEST

Also pending before your subcommittee is our fiscal year 1986 appropriation request which is for 21,408 positions and $1,185,664,000. This request includes an enhancement of 371 positions, representing a 1.8 percent increase, and an enhancement of $34,535,000 in budget authority, representing a 3 percent increase over fiscal year 1985. These increases are for our investigative operations.

Although there may be some modest reordering of funding among programs, as we proceed to and through fiscal year 1986, the funding level requested will allow us to continue our important investigative thrusts as well as our automation and secure voice radio communications initiatives which I have addressed in prior years.

Fiscal year 1986 funding will also meet the urgent need to expand the dormitory and classroom space requirements for the FBI Academy at Quantico, VA. Training at the FBI Academy has dramatically increased in both volume and sophistication in recent years and has badly outstripped available facilities. While the Forensic Science Research and Training Center was constructed in 1981, there was no expansion of dormitory space to accommodate this expanded training. Training associated with personnel increases appropriated in recent years has also tremendously strained the facilities at the Academy. Site preparation funding was provided in fiscal year 1985, and $13.1 million in fiscal year 1986 base funding will make the needed dormitory a reality.

Fiscal year 1986 funding will also permit continuation of the National Center for the Analysis of Violent Crime. The National Center for the Analysis of Violent Crime was established in 1984 and will continue in 1985 through funding provided from other components of the Department of Justice. The National Center for the Analysis of Violent Crime is a behavioral science and data processing resource center which consolidates research, training and investigative support functions for the purpose of providing expertise to law enforcement agencies which are confronted with unusual, bizarre and/or particularly vicious or repetitive violent crimes.

Mr. Chairman, I again request your favorable consideration of our budgetary request. As you pointed out, I have a more detailed submission regarding our fiscal year 1986 request, which is being furnished for the record.

INTRODUCTION OF OTHER WITNESSES

I should also have introduced Thomas A. Hughes, Inspector-Deputy Assistant Director, Financial Management Branch, Administrative Services Division, and Mr. William Lee Colwell, Executive Assistant Director—Administration, who are with me at the table today. I would now be very pleased to answer any questions.

[The statement follows:]

PREPARED STATEMENT OF WILLIAM H. WEBSTER

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

Good morning Mr. Chairman. It is a pleasure to again appear before your subcommittee, and I want to recognize and thank you and the other members of the subcommittee for your support of the FBI.

Mr. Chairman, pending before your subcommittee is a mixture of increases and decreases to the resources of the FBI with which we operate today. The increases address the expanding responsibilities being levied upon the FBI while the decreases recognize the fiscal environment of today.

With regard to the increases, first before your subcommittee is a supplemental request for this fiscal year (fiscal year 1985) for 96 agent and 52 support positions and $1.5 million to carry out provisions of the Comprehensive Crime Control Act of 1984. This act increases the responsibilities and consequently the resource requirements of the FBI in its organized crime, white-collar crime, and domestic terrorism programs and in the enforcement of our seizure and forfeiture of assets authorities.

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Mr. Chairman, I again request your favorable consideration of our budgetary request. I have a more detailed submission, regarding our fiscal year 1986 request, which is being furnished for the record. I will be glad to discuss any questions you have at this time.

[Clerk's note: The detailed submission is available in the subcommittee files for viewing.]

FBI'S ROLE IN DRUG ENFORCEMENT

Senator RUDMAN. Thank you, Judge Webster. As you were told early this morning, due to a scheduled meeting, we are working under time constraints, so I will try to make my questions brief and direct. We will submit additional questions for the record and will leave ample opportunity for those to be answered. The first question I have really ties, to some extent into issues raised with the previous witness, Mr. Lawn. That has to do with the whole area of law enforcement activities in the drug area.

Of course, in 1982, the Attorney General directed the Bureau to become involved in that, and you have been very much involved. My threshold question is, do you believe that the FBI is in the business of drug enforcement permanently; and secondly, do you think it ought to be?

Mr. WEBSTER. I think very clearly, the FBI is in the business of drug enforcement. We were given that concurrent jurisdiction 3 years ago, starting with no additional resources, and then, of course, being given additional resources through the Organized Crime Drug Enforcement Task Force Program. We have gone from approximately 100 drug-related cases to approximately 2,000 cases of major importance. Over 1,000 agents are now committed to drug work. About 800 of those 2,000 cases are being operated jointly with the Drug Enforcement Administration.

I see the FBI's role as a very clear one, one that had not been previously addressed by any drug enforcement authority or drug enforcement agency, State, local or Federal with jurisdiction in this area, and that is in the area of organized crime and drugs, financial crimes and drugs, and public corruption and drugs. All three of those areas have tremendous impact upon drug distribution and trafficking in this country, and I believe that the kind of attention that the FBI has given them, both independently and jointly with the DEA and with other law enforcement agencies, is now having a significant impact.

I can cite the "Pizza" case as a good example of the kind of work that expertise in organized crime can produce in terms of major heroin trafficking organizations. What the FBI's role should be in the future with respect to DEA, I think, is still beyond my crystal ball.

Certainly, we have worked very hard to bring the two organizations together. That was my charter from the Attorney General, and we have very consistently managed to bring the two organizations together like a pair of water skiers working side-by-side as a joint operation to show the kind of successes we can have.

What we are now focusing our attention on is the ratcheting in for more effective relationships, the kind of things that just don't happen naturally, the consideration of cross training. The cross training has gone on at an excellent pace. Now the consideration is moving DEA from the Federal Law Enforcement Training Center in Glynco, GA, to the FBI Academy in Quantico, VA. We have confronted issues such as the disparity in communications systems and making those systems work when we are working together.

We have performed a number of functions for the Drug Enforcement Administration that were not taken into account in the past for budgetary and organizational reasons. We have done background investigations, pilot studies, and are performing maintenance of their motor vehicle fleets. The forensic laboratories have now been coordinated. They are doing the drug work; we are doing the other forensic work. There are some rather impressive achievements which, I think, could be supplied for the record, if you wish, which certainly would take quite a bit of time—I am prepared to do so this morning—which shows what we are doing to make the combined effort more effective.

[The information follows:]

OPERATIONAL AND ADMINISTRATIVE RELATIONSHIP BETWEEN THE FBI AND THE DEA

BACKGROUND:

In June 1981, the Attorney General appointed FBI Executive Assistant Director Francis M. Mullen as Acting Administrator of DEA. At that time the Attorney General instructed that FBI Director Webster would be responsible for the combined investigative strategies and programs of the FBI and DEA.

On January 28, 1982, the Attorney General issued an order delegating to the FBI concurrent jurisdiction with the DEA for violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970. In doing so, the Attorney General also announced that the Administrator of the DEA would function under the general supervision of the Director of the FBI.

On March 12, 1982, the Director of the FBI and the then Acting Administrator of DEA issued the Implementation Directive for Concurrent Drug Investigative Jurisdiction Between the DEA and the FBI. This Directive presented general guidelines for the coordination of investigative activity, the handling of investigative matters, and the cross-training of FBI and DEA Special Agents to enhance their respective knowledge of the other agency's operations and responsibilities.

On August 15, 1984, FBI Director Webster initiated the establishment of the Committee for the Coordination of FBI/DEA Activities. As stated by Judge Webster, this was to "avoid duplication, effect economy, and make the operations of the FBI and DEA more efficient." Charged with the responsibilities of monitoring all joint FBI/DEA activities, this Committee was broken down into four subcommittees.:

1. Technology
2. Operations
3. Budget Formulation
4. Long-Range Planning

STATEMENT OF PROGRESS MADE:

In connection with the close liaison and cooperation between the FBI and the DEA, there have been a number of areas and specific instances where actual cooperative action has been initiated, is being enacted, or is being evaluated.

Areas of current cooperative interest are:

1. Administrative
2. Law Enforcement Support Functions
3. Technological
4. Training
5. Operational Techniques

Within these areas specific instances of actual or planned cooperative action are as follows:

1. ADMINISTRATIVE

- DEA Background Investigations

Since 1982, the FBI has been conducting background investigations, on a reimbursable basis, for DEA Special Agents and Compliance Investigators. The FBI will now update background investigations on applicant matters completed and reported over one year ago. To facilitate this FBI support, the DEA is now utilizing the FBI application by merely substituting the words DEA for FBI on the application.

- FBI/DEA Employee Relocation Services Contracts

The DEA has joined in an FBI contract to provide transferred employees with a guaranteed home purchase; home selling and finding assistance; mortgage finding assistance; rental management; and spouse career counseling.

- Physical Examinations

Since June 1984, the FBI and DEA have been utilizing an FBI contract to provide physical examinations for employees in the Washington, D.C., area. This cooperative effort is being further examined for application in other major cities.

- Formal Budget Coordination Between the FBI and the DEA

On January 28, 1985, a Memorandum of Understanding was signed between the FBI and the DEA to coordinate FBI/DEA budget formulation and strategy.

- FBI Assistance in the Procurement of DEA Replacement Vehicles

In Fiscal Year 1984, the FBI assisted the DEA in the procurement of its replacement vehicles. FBI replacement guidelines and purchasing procedures were explained to DEA representatives, and a combined vehicle order was submitted to the General Services Administration (GSA). In addition, joint meetings were held with GSA representatives. In Fiscal Year 1985, the DEA prepared its order using FBI procedures and specifications and the two orders were combined for transmittal to GSA.

- Records Management

Since 1982, representatives of the FBI have worked directly with their counterparts at the DEA to evaluate and improve certain administrative functions at the DEA. These include DEA's mail program; the security associated with incoming mail (X-Ray equipment); and a centralized and more efficient personnel records system.

Procedures were formulated to be used by the FBI in forwarding narcotic evidence in FBI cases to DEA laboratories for examination and analysis. This includes the use of DEA forms.

A procedure was developed for the handling of DEA requests of the FBI's electronic surveillance (ELSUR) index. A policy was also established for the use of ELSUR techniques in joint FBI/DEA investigative operations.

The DEA's foreign establishments are provided with information contained in the DEA's Narcotics and Dangerous Drugs Information System (NADDIS). The basic function of NADDIS is to serve as DEA's general index. The DEA's foreign establishments do not have on-line access to NADDIS; instead, the foreign locations are provided NADDIS data on vesicular microfiche which has been generated by Computer Output Microfiche (COM) and processed by the Department of Justice. Destruction of vesicular microfiche is accomplished by a burning process which takes several hours. The State Department has been pressing all overseas components of the United States Government to reduce the destruction time for their records holdings.

To comply with the Department of State request, the Department of Justice is switching from vesicular to diazo microfiche, which the Records Management Division currently uses for the FBI's Legal Attache Microfiche Program. Diazo microfiche can be destroyed within 15-30 seconds when immersed in methylene chloride. The

Department of Justice is not equipped to process and duplicate diazo microfiche. Because the FBI uses and has the capability to process and duplicate diazo microfiche, the DEA has requested the FBI to support its diazo microfiche initiative. The Records Management Division will conduct a 90-day feasibility study to evaluate the impact of the FBI's supporting the DEA's diazo microfiche application.

- Congressional Affairs

There is an informal liaison between the Congressional Affairs Offices of each agency. This has allowed the FBI and the DEA to present a unified, mutually beneficial position on drug-related matters of interest to Congress.

- FBI Maintenance of DEA Vehicles

The FBI has vehicle maintenance facilities in most major urban areas. A joint study team was formed to consider the feasibility of FBI facilities servicing DEA fleet vehicles. The assumption of these responsibilities will occur in three phases. Phase one is a pilot project which was initiated in October 1984, involving three field offices: Buffalo, Chicago, and Louisville. During this initial phase, the operations are being closely monitored to identify any problem areas and establish the procedures for quarterly reimbursement of costs to the FBI. Phase two consists of an expansion of this service to eleven additional DEA offices and is scheduled to begin in April 1985. Phase three involves the assumption of maintenance responsibility for the majority of DEA's fleet and is scheduled for implementation in October 1985.

- Colocation of DEA Personnel in FBI Space

A review has been conducted and it has been determined that space allocations of FBI space in Omaha and Springfield are adequate for the colocation of the FBI and the DEA . Minor renovations will be necessary.

DEA personnel are currently being colocated into the Tyler, Texas, FBI Resident Agency (RA), which is being relocated to new space.

- Forfeiture and Seized Property

The FBI assumed responsibility for the processing of assets seized for forfeiture purposes in drug-related FBI cases from the Drug Enforcement Administration (DEA) in August 1983. Since that time, representatives of DEA and the FBI have been working closely on the development of similar forfeiture programs. The FBI has a centrally managed, highly automated forfeiture program; the DEA's is decentralized and automation efforts are limited. DEA is in the process of centralizing its forfeiture program to gain increased management control and to reduce the workload of field personnel. To this end, FBI personnel have been providing expertise in the areas of computer programming and property management. A long-range goal in this area is to have an interactive forfeiture processing system which can be used by both agencies for the generation of required notices and reports. A joint system will also eliminate the possibility of dual counting of statistics.

- Automated Personnel/Payroll System

In May 1983, the DEA proposed the transfer of responsibility for the maintenance and operation of its automated personnel and payroll records from the Department of Justice (DOJ) to the FBI. At that time, this was not feasible. However, in May 1984, the FBI initiated steps, utilizing state-of-the-art data base management technology, to rewrite its current system. This effort should take approximately 18 months and would appear to be the opportune time to consider complete or partial merging/sharing of this system with the DEA.

In connection with FBI efforts to develop an integrated personnel/payroll system, the DEA has reviewed the FBI's functional requirements and statement of work. Although no commitment has been made, on February 25, 1985, DEA representatives stated that there were no functional or technical problems which would prevent DEA from joining the FBI's development effort.

- Career Development Program and Transfer Policy

In October 1984, the FBI and the DEA held informal discussions to assist the DEA in further developing its Career Development Program and Office of Preference Transfer Policy.

- Consolidation of FBI/DEA Contracting Functions

A study is presently being conducted regarding the feasibility and benefits of consolidating FBI and DEA contracting requirements exceeding $100,000 into the FBI's contracting function. The DEA has expressed operational concerns with this proposal, including its effect on DEA's functioning as an independent agency.

- Meeting with DEA Laboratory Directors

James H. Geer, Assistant Director in charge of the FBI Laboratory, has met with DEA Laboratory Directors on April 17, 1985, to advise them of FBI Laboratory assistance which is available to them and to resolve any administrative problems which may exist in the submission of evidence to DEA Laboratories by FBI Field Offices.

- Cost Avoidances

As a result of colocation of certain functions of the FBI and the Drug Enforcement Administration (DEA) there will be some savings of employees.

The DEA does not have an automotive maintenance staff for its fleet of 1,553 vehicles. It is projected that a staff of 31 FTE's for the DEA would be required in FY 1986 for maintenance of its vehicles. This is based on the ratio of 50 vehicles to one mechanic, which is recommended by the National Association of Fleet Administrators (NAFA) as the optimum number of vehicles per mechanic. By utilizing the FBI's facilities, the FBI can perform this service with 23 FTE's and the pending 1986 request for the FBI will provide 23 FTE's on a reimbursable basis from DEA for this purpose; therefore, there is a savings of 8 FTE's and related salary costs.

The FBI is currently conducting a Productivity Improvement Program Study on the colocation of the DEA's Automated Data Processing and Telecommunications (ADPT) equipment within the FBIHQ Computer Center. This colocation saves the DEA from constructing, maintaining, and staffing an independent computer center. For 1987, the FBI is requesting 11 workyears to support this effort. As a part of the productivity study, it will be determined what savings in resources occurred as a result of DEA's not operating an independent computer center.

2. LAW ENFORCEMENT SUPPORT FUNCTIONS

- Processing of DEA Applicant and Personnel Fingerprint Cards

On April 23, 1982, the DEA requested the FBI to handle DEA's applicant and personnel fingerprint cards in the same manner as FBI cards are handled. This was initiated in May 1982, and continues today.

- Agreement Regarding Laboratory Examinations

On February 3, 1982, the FBI and DEA reached a general agreement that cases requiring the examination of drugs would be handled by the DEA Laboratory system. According to the agreement, all other forensic science examinations in FBI or DEA cases would be handled by the FBI Laboratory.

FBI forensic science examinations for the DEA have increased significantly from 1981 (416 examinations) through 1984 (6,061 examinations).

Thus far in FY 1985, the Laboratory has received 33 requests for examination. These requests contained 1,088 specimens of evidence and 2,280 examinations had been conductd as of March 30, 1985.

- FBI Laboratory Examination of Illegal Business Records Relating to Narcotics Matters

Based on a request received from the DEA, the FBI Laboratory has begun clandestine business records examinations on documentary evidence seized by the DEA.

Since the March summary was prepared, three additional cases have been received which involve the examination of business records dealing with narcotics matters, bringing the total in 1985 to thirty-one cases.

- Joint and Cross FBI/DEA Training

Since 1982, there has been consistent joint and cross-training in areas of pertinent specialties relating to the respective forensic science laboratories of DEA and FBI, as well as training in technical investigative techniques and operations.

- Reimbursable Services Performed for DEA by FBI Laboratory

The processing of photographic prints, trial chart work for prosecution of DEA cases, and framing of pictures are all performed for DEA by the FBI Laboratory on a reimbursable basis.

- Photographic Services Performed in Support of Joint FBI/DEA Investigations

The FBI Laboratory has provided an array of photographic equipment to the Drug Task Forces. Also, in 1984 the FBI Laboratory produced 74,000 photographic prints for the Task Forces.

- Direct and Laboratory Support Provided in Connection with the Kidnapping and Murder of DEA Special Agent Enrique Salazar Camarena in Mexico

Translation services were also provided to DEA in suport of the investigation of the murder of SA Camarena. This involved translating a series of deposition statements made by subjects arrested by Mexican police in connection with the murder. This amounted to approximately 40 pages of translation.

On March 6, 1985, a laboratory examiner traveled to Mexico and conducted crime-scene searches and assisted Identification Division with the identification of SA Camarena's body.

On March 28, 1985, an examiner from the Microscopic Analysis Unit traveled to Mexico to conduct a crime scene-search of a 1983 Mercury which had been seized during the murder investigation of SA Camarena.

On April 9, 1985, an FBI Polygraph Examiner traveled to Mexico to assist a DEA Polygraph Examiner in examinations in connection with this case which were scheduled for April 14, 1985.

On April 12, 1985, two examiners from the Microscopic Analysis and Mineralogy/Metallurgy Units traveled to Mexico to further process evidence connected with this case.

Laboratory examinations are continuing on evidence recovered during the above-mentioned crime searches.

- Quality Assurance Assistance Provided to the DEA Laboratory

Procedures are being established regarding how the FBI's Forensic Science Research and Training Center will administer and oversee a portion of the DEA Laboratory's quality assurance program. This is scheduled for implementation in 1985.

- DEA's Latent Fingerprint Capabilities

In 1983, the FBI and the DEA conducted a joint study concerning latent fingerprint examinations of physical evidence. A decision was reached that the DEA should have resources within its Laboratories trained by the FBI in various latent fingerprint and related techniques. The absence of available personnel resources has prevented the DEA from fully developing a latent fingerprint capability in each of its seven regional laboratories. As necessary, the DEA is utilizing the services of the FBI's Latent Fingerprint Section for routine latent print examinations and special field processing.

3. TECHNOLOGICAL

- FBI Telecommunications Network Support of DEA

At the request of the Office of Management and Budget (OMB), the FBI is currently involved in a study to analyze prospective DEA use of FBI telecommunications facilities.

- FBI Support of DEA's El Paso Intelligence Center (EPIC)

In March 1984, the FBI and the DEA initiated a joint study to enhance the EPIC operation. Utilizing assistance from the Institute for Defense Analyses (IDA), the FBI is in the process of assisting in the enhancement of EPIC's computer operation.

- FBI/DEA Compatible Tactical Radio Systems

In 1983, an effort was initiated to determine the feasibility of providing separate tactical radio facilities to each agency for routine use while permitting a common facility for joint operations. This project was delayed because of DEA budget constraints. Tentative plans are to implement a pilot project in Boston in June 1985.

- Explore Common Data Dictionary

With respect to both agencies' Data Resource Management, it has been noted that the FBI and the DEA utilize distinctively different and operationally incompatible data base management systems. Nevertheless, the FBI and the DEA are looking at ways to exchange data dictionary information, thereby forming a common functional data dictionary which would serve to locate and define data which resides in either the FBI or the DEA environment. This is an ongoing project.

- DEA/FBI Technology Coordination

In October 1983, 14 separate "topical working groups" were established, each comprised of a staff member from the FBI and the DEA. These groups are examining a number of technical areas of cooperative interest to formulate plans for joint efforts.

- Field Office Information Management System (FOIMS) Testbed for DEA

The FBI has made a presentation regarding FOIMS to the DEA and plans are being formulated to initiate a test project of FOIMS for the DEA in Boston. Project requirements have been evaluated and hardware is to be installed in the Boston DEA office by June 1985.

- FBI Computer Center Support of DEA

On February 18, 1985, in response to a request from OMB, the FBI initiated a productivity improvement study to evaluate the cost savings and benefits of supporting the DEA's secure information processing requirements with the FBI Computer Center.

- DEA Requirements in NCIC Study

In connection with the FBI's ongoing National Crime Information Center (NCIC) study, the contractor will contact DEA to identify the DEA's future NCIC service needs.

- Colocation of Engineering Facilities

The FBI and the DEA are actively evaluating the feasibility and mechanism of colocating their engineerng components in a new facility scheduled to be completed at the FBI Academy in 1988.

4. TRAINING

- Jurisdiction Orientation

FBI and DEA field personnel have been provided orientation presentations regarding the policy and procedures of each organization, as well as their jurisdictional statutes.

- Latent Fingerprint Training for DEA Personnel

DEA field personnel have been invited to attend FBI Basic and Advanced Latent Fingerprint Schools throughout the United States. Also, DEA has been advised that a three-week Administrative Advanced Latent Fingerprint School and a two-week Identification Photography School are available at the FBI Academy for DEA fingerprint personnel. The DEA is being advised when additional schools become available.

- Asset Removal Training for DEA

FBI instructor personnel have functioned on a continual basis to provide training for DEA personnel in financial investigation matters. Approximately 691 DEA personnel have been provided instruction by the FBI in asset removal.

One additional class in asset removal training will be presented by Laboratory personnel at Glynco, Georgia, on April 15, 1985.

- Instructor Development for DEA

In July 1982, a one-week Instructor Development Training Course was provided to 17 newly appointed DEA instructor personnel at the FBI Academy. A similar course was provided by FBI personnel at the Federal Law Enforcement Training Center (FLETC) in August 1983.

- FBI Field Schools Attended by DEA Agents

During FYs 1983 and 1984, approximately 480 DEA Agents attended FBI field schools on various topics.

- DEA Basic Agent Training at FLETC

During DEA basic training there is a four-hour block of instruction on FBI organizational structure, jurisdiction, informant matters, and organized crime. Additionally, there is a six-hour block of instruction relating to FBI Laboratory matters.

- Other Training Provided to DEA Agents at the FBI Academy

Since FY 1981, in excess of 200 DEA personnel have participated in various FBI Academy training programs. These included special investigative matters (i.e., financial crimes), media relations, and various management programs.

- Narcotics Specialization Training for FBI Agents

Since April 1982, approximately 724 FBI Special Agents and supervisors have been afforded a two-week Narcotic Specialization Training Course at the FLETC. Four additional courses are planned for FY 1985.

- Clandestine Laboratory Training for FBI Agents

Since 1982, approximately 40 FBI Special Agents have been trained by the DEA in Clandestine Laboratory Matters.

- Training Provided DEA by the FBI Laboratory

One additional class was presented by FBI personnel at the DEA Laboratory, Washington, D.C., in February 1985.

On March 28, 1985, the Laboratory conducted a series of briefings for DEA SACs, which were designed to acquaint them with the capabilities of the FBI Laboratory.

- Training Provided New FBI Agents by DEA

Since February 22, 1982, all FBI new agent classes have received a 16-hour block of instruction from DEA personnel on DEA organization, jurisdiction, and related drug matters.

- Providing FBI Special Agent Attorneys as Legal Instructors for DEA Training at FLETC

The FBI has detailed Special Agents to provide legal instruction to DEA personnel at FLETC. The DEA currently does not have Legal Instructors available.

- Seminars for FBI/DEA Attorneys at the FBI Academy

Selected seminars have been presented at the FBI Academy for FBI and DEA Legal Counsel attorneys. This program is continuing.

- Exchange of Training Personnel

The FBI and the DEA have exchanged instructors to complement their respective training programs.

- Colocation of FBI and DEA Training

The feasibility and benefits of moving DEA training to the FBI Academy have been studied and are currently being evaluated by FBI and DEA management.

- Bomb Recognition and Hazardous Device Training

During the period of June 3-7, 1985, the FBI's Bomb Data Center will provide bomb recognition and hazardous devices training to 25 DEA Agents at the FBI Academy.

5. OPERATIONAL TECHNIQUES

- Weighing of Drug Evidence

On December 17, 1984, FBI policy was changed to require the weighing of drug evidence before sealing the evidence container or before submission to a laboratory. This is in compliance with existing DEA policy.

- Coordination of Organized Crime Drug Enforcement Task Force (OCDETF) Cases

FBI and DEA officials have met to resolve misconceptions held by a number of U.S. Attorneys regarding OCDETF matters. As a result, the FBI and the DEA prepared similar instructions to their field divisions to clarify the OCDETF guidelines.

- Coordination of Field Operations Between FBI/DEA

Policy considerations are under review to formalize the mechanism for exchange of information between the respective field offices of both organizations.

- Consensual Monitoring--Procedures

DEA policy was recently changed to comply with existing FBI policy regarding the destruction of consensual monitoring tapes. Broader changes in current DEA policy regarding consensual monitoring usage in investigations has been recommended by the FBI. The DEA is currently evaluating the FBI proposal.

- Use of Informants

The FBI and the DEA are in the process of drafting policy to prevent inadvertent dual use of an informant.

- Conduct of International Investigations

Currently there are differences in the FBI's and the DEA's perception of the role the FBI will play in international narcotics investigations. Based on investigative trends, the FBI has become more involved in international investigations. The FBI has utilized its Legal Attaches and its liaison with foreign police agencies in support of these efforts. The DEA believes that it should remain the principal representative in all foreign narcotics relationships. This difference of opinion continues to be discussed.

- FBI Personnel Support for DEA's EPIC

Two senior Organized Crime Information System analysts, two teletype operators, and a supervisory special agent have been assigned by the FBI to EPIC.

- Exchange Program

Two DEA supervisors have been assigned to FBIHQ to review investigative information in ongoing narcotics cases. This assignment will facilitate liaison efforts and the exchange of pertinent information.

A total of 10 FBI Special Agents has been assigned to DEA Headquarters, five of whom became permanent DEA officials.

- Undercover Operations

Both organizations operate under different undercover guidelines. In March 1984, FBI Director Webster issued interim guidelines to be in effect until the issue is resolved. This matter continues to be discussed at a headquarters level but is still unresolved.

- Translation Services Performed for DEA

The Laboratory was requested to translate certain Italian Legislation against organized crime from Italian into English and then to translate the same material into Spanish to facilitate meetings which the DEA was going to hold on this subject in South America. This legislation was voluminous and amounted to approximately 72 pages of translation.

MERGER OF THE FBI AND THE DEA

Senator RUDMAN. I think an amplified answer for the record would be very helpful. I wanted to just ask you one question at that point. If I understand your answer, and it is what I have understood to be the practice, the FBI is moving into the drug area at a different level. It is dealing with a different kind of threat than DEA had traditionally been dealing with. DEA is continuing the traditional law enforcement threat against the traditional types of drug distribution such as street drugs.

That being the case, why not strongly consider this. Is there consideration of an eventual merger of the agencies with DEA being, if you will, a part of but a separate division under the Director of the FBI?

Mr. WEBSTER. Clearly, we are considering that, and we have focused on it at every available opportunity, not just my focus on it, but in our conference of Special Agents in Charge and the conference of the DEA Field Commanders, our joint meetings together. We have asked these hard questions based on field experience and based on headquarters experience. I believe it is possible; I believe it is more than probable that a merger will be our ultimate recommendation.

But I have been cautious of one mistake. In 20 years of association with law enforcement, I have watched the drug effort being cut up, twisted around, reorganized, and I have watched the effect on the brave and dedicated law enforcement members of DEA or its predecessor, the Bureau of Narcotics and Dangerous Drugs, going from one agency to another.

It has been very important in this exercise in the last 3 years that there be no loss of momentum, no downtime, and no diminution of morale, of either DEA Agents or FBI Special Agents, and I believe we are achieving that goal.

In many areas, a more clear signal might be useful. I want to be sure that everybody knows who they are working with. These 3 years have developed enormous mutual respect between two agencies. I think the potential is there to do exactly as you suggest, to bring the DEA into the FBI, but to maintain its identity and to maintain its mission clearly, because we have got to have a drug mission clearly identified in this country.

There are many other things that have to go on besides just investigating drug cases; there are regulatory efforts and the strong effort abroad to reduce imports.

Senator RUDMAN. Certainly, the Bureau has a broad umbrella. Looking at the FBI, its enormous resources and its track record, and looking at DEA, which is a younger organization, it would certainly seem, but with the caveat you lay forth, that it is something to be looked at.

Mr. WEBSTER. It is something being seriously looked at. My own view is in moving in this direction consistently, but I want to be sure that we have a strong base of support and that there is congressional approval of the direction in which we are going and an understanding of it. I think we are getting at that through the empirical, the ratcheting in. We are closer and closer to having a sweeping in of the organizations.

ROTATION OF FBI AGENTS

Senator RUDMAN. Let me ask you a question about your rotation of agents. You periodically rotate the Special Agents. Customs has an interesting policy. They tend to give them an option, at least, of spending almost an entire career in one particular area on the theory that they really get to know that area; become part of that community and have a foundation of knowledge.

Is there any merit to that, or are the charges and the responsibilities so vastly different between those two kinds of activities that it wouldn't work with the Bureau?

Mr. WEBSTER. There are ups and downs with that. I might say that the number of transfers in the Bureau is approximately one-third of what it was when I came in.

I think, probably, it is too low at the present time. Budgetary constraints influenced us, inflation influenced us, and the inability to give our agents a fair shake with their families and the thoughts of moving which Congress redressed in the last session, so we probably will move a little stronger into the program that I believe works.

We are a national organization. We have some 200 Federal programs. It is very important that our agents receive the training and the skill that they get by being in different places. At the career management level, I think it is important that our agents not become sterile. While they have to and must cooperate with the local establishment, they must never become a part of it, because one of our responsibilities is to investigate allegations of corruption in public office and allegations of police brutality and other civil rights matters that make it difficult to do when you are totally a part of an individual community.

But mostly, it is training. The variety that we get in small and medium offices is not as apparent in the 12 top field offices, where there is more specialized work. We think it is important that before agents become specialized they become fully trained in responsibilities of the disciplines in this area.

INVESTIGATIONS FOR OTHER AGENCIES

Senator RUDMAN. Judge Webster, one last question. I will have a number for the record. It has to do with all of the workyears you expend each year doing background investigations. By the way, you do a very, very thorough job. I recently had an experience with a nominee from our State. I am very impressed with how thorough that investigation was, which it has to be.

But having said that, and maybe the FBI is the only agency in the government that can do that. Could it be considered a misuse of some highly talented people if, in fact, there was a better way to do it. Is there a better way to do some of these background investigations? You do them for the White House; certainly for the Congress; you do them for a lot of people.

Mr. WEBSTER. I must say that we look at that very hard, and we, from time to time, have suggested that some of the work that we do could be handled elsewhere. We will continue to look at it.

But I think that perhaps you need to talk also to our clients, the ones who asked us to do the work. There are some limitations on how much can be delegated. Whenever a background investigation produces an allegation of criminal misconduct, it comes back to us anyway. To that extent, we are better able to finish it. Some are quite sensitive.

We are dealing with important issues for which the FBI has been given responsibility. We are dealing with lifetime appointments of Federal judges, Federal prosecutors in the Justice Department and Cabinet Officers. I am not sure who could do that job better. Another factor that is a little difficult to explain, but it influences things a bit, is I am not sure what we would achieve on the reimbursables. So many of these are reimbursed. If they are assigned elsewhere, we wouldn't have the funding to put our agents into other types of work.

So I'm not sure if that is a motivation, what it could achieve. I appreciate your concern about it, because we don't want to be overburdened with licensing officers and other things like that.

Senator RUDMAN. I would think that you would probably find some unanimity among people in the Judiciary, U.S. attorneys, Cabinet officers, employees of sensitive congressional committees, that it is extremely important that we have confidence in that.

But once you get beyond that, the man hours that go into investigating people that are going to be holding relatively ordinary jobs are considerable. It just seems that there ought to be a better way of doing it than putting such talent on routine investigations. If you have some thoughts on that, we would certainly like to hear from you.

NUMBER OF AGENTS IN THE FBI

Senator HOLLINGS. Mr. Webster, how many agents do we have now in the FBI?

Mr. WEBSTER. 8,813.

Senator HOLLINGS. You had gotten down to 7,000 just 4 years ago. You had to curtail work on crimes like bank robberies. We will give that to the local force. I am back now to the Chairman's observation with respect to the merger of the DEA. Is there a resistance there due to the higher training required for an FBI Agent than that required for a DEA Agent?

Mr. WEBSTER. Senator Hollings, we are really not resisting it. We are trying to make sure that every area has a solid basis of support so we don't pick up internal and external opposition. In going back, I remember the times when we had 7,000 agents. I remember you had a very major role in reversing that trend, for which the FBI will always be grateful. It had gone down, and we were losing for reasons that made no sense at all.

Senator HOLLINGS. I appreciate that.

Mr. WEBSTER. I really do appreciate this. We got them back just in time for some very major problems that were going on. We have, on the bank robbery and other cases that we have to back away from to a degree, we did it with a principled approach that I think is working for us. We still work on the major bank robberies in this country, particularly in areas where States and localities have no capacity to deal with them. But through the years, we have been trying to upgrade through our training program the ability of local law enforcement to deal with them.

Automobile thefts went way down on our priority list, but we still have about 800 motor vehicle theft rings doing enormous amounts of damage. Our approach to the criminal enterprise has been the one thing that the FBI can do that very few other law enforcement agencies are capable of doing.

AGENTS ASSIGNED TO CAR THEFT INVESTIGATIONS

Senator HOLLINGS. How many would you have assigned, say, in ball park figures, to a car theft ring?

Mr. WEBSTER. I will try to supply that answer for the record. It is in our General Crimes Program, and I don't know if you can break that out. But I will try to provide it for you for the record. We just announced a major case in the St. Louis area not long ago where you are talking about literally dozens of individuals being rolled up in one single investigation.

[The information follows:]

CAR THEFT RING WORKYEARS

The FBI does not maintain statistics on the number of agents assigned to each major car theft ring case. However, during fiscal year 1984 a total of 124 agent workyears were expended investigating ring-type cases. During this period 960 car ring cases were opened and investigated.

AGENTS ASSIGNED TO DRUG ENFORCEMENT

Senator HOLLINGS. I wondered in comparison to drug enforcement.

Mr. WEBSTER. Oh, we have about 1,000, as I said, about 1,000 out of the 8,000 agents committed and funded for drugs.

TRAINING: FBI AGENTS VERSUS DEA AGENTS

Senator HOLLINGS. If I left the Drug Enforcement Administration as an agent and came over to the FBI, would I receive additional training?

Mr. WEBSTER. I am not sure I understand the question.

Senator HOLLINGS. I am a DEA agent, and I apply, and you give me a job at the FBI. Do you give me further training?

Mr. WEBSTER. Yes, we do.

Senator HOLLINGS. Isn't that the point? That can't be reconciled, and the problem, I don't think, is a political problem. It is a bipartisan, strong feeling to bring it all under the auspices of the Federal Bureau of Investigation. I think the faster we move on that while you and this Congress are here and things are quiet and accepted, I think that is the real gimmick. We are never going to solve that problem of loyalties and differences of feeling; one thinks, "I am in FBI, so I am trained. You are little old DEA, you are not trained so well, and I am trained." That is human nature.

Mr. Webster. That is true.

Senator Hollings. You answered a question: Let's get them involved and get them all together, because we really need it. It used to be that "the Federal Bureau of Investigation doesn't want to fool with drugs. It is just a common, ordinary street thing of selling a little bit of pep or dope or whatever it was."

Now this thing is way bigger than any kind of car theft.

Mr. Webster. We know it is the number one problem in the country.

Senator Hollings. And sophisticated.

Mr. Webster. I want to make sure the record is clear. When I took it on 3 years ago, we weren't dragged into it. We were recommending it.

Senator Hollings. Right. Yes, sir. I understand.

Mr. Webster. Before that, I had been out in the field talking to our field commanders on the West Coast and Miami, and every place else. Everybody was on board and felt we were ready for it. We have learned, too, that DEA has a lot to teach us about drugs. I sent several hundred FBI Agents to Glynco for training in the conduct of drug investigations. If we can bring these two into Quantico and train them together, I think that will be a quantum step in what you suggest, Senator.

FOREIGN COUNTERINTELLIGENCE

Senator Hollings. With respect to foreign counterintelligence, we had a problem back during the time, say, of Griffin Bell or Civiletti as Attorneys General. They would receive from the FBI an objection to the admission of certain foreign agents coming into the country. The FBI recommended a visa not be issued by the Department of State and then were overruled by the Department of State. I always felt the Department of Justice has the primary role for internal security.

I understand that has been reconciled, but does state—when you sign off and say this is a security risk—adhere to that now. Or does the State Department still give them a visa?

Mr. Webster. The State Department has a right of appeal to the Department of Justice and there is an officer in the Department of Justice who acts as the arbitrator of these situations. We have found that by focusing on paying attention to the State Department's needs, when we raise an objection, very rarely is it appealed. I think that the number of times when the FBI has been overruled is so seldom that it is really a nonissue now.

Senator Hollings. It is a nonissue now as you see it?

Mr. Webster. As I see it.

Senator Hollings. Why is it that the slots for foreign counterintelligence have not been filled? We won't talk about the exact numbers, but there is about a 10 percent shortfall there each time.

Mr. Webster. This has been a problem, truly. You have appropriately called our attention to it, and we have been working to remove it. There have been a couple of reasons. We have had hiring freezes, and funding freezes where we couldn't really anticipate when we could hire until the end of the year when the funds were released.

But we are over those hurdles, and each year, we have been getting additional resources. So we have had to pool those. We use only mature agents with counterintelligence training, which requires about a 2-year preparation period before we can turn them loose, so we are behind about a year. We have been narrowing the gap each year. Even though we have been narrowing and getting special agents ready for foreign counterintelligence work, we have been narrowing that gap every year. Next year, I believe it will show a smaller gap between what we have authorized and what we actually have working.

MINORITY AND FEMALE AGENTS

Senator HOLLINGS. How many minority agents and how many female agents do you have at the Federal Bureau of Investigation? The women agent question is the one for the record.

Senator RUDMAN. I take it that question is asked quite a bit.

[Laughter.]

Senator RUDMAN. Senator Hollings carries a card like that on the deficit.

Senator HOLLINGS. J. Edgar Hoover would say if he ever had a woman agent, he would send her to Anchorage.

[Laughter]

Senator HOLLINGS. Go ahead.

Mr. WEBSTER. I measure it, and I bring these out when I am out in the field, because that is where the applications are used. I measured from the day I came on board. In 1978, FBI had 144 Black agents; we now have 172 Black agents. Pardon me, 316 Black agents.

Senator HOLLINGS. I was going to say, more than that.

Mr. WEBSTER. No, that was a gain of 172. We had 155 Hispanics; we now have 327. We had 15 American Indians; we now have 38. We had 34 Asian American agents; we now have 95. We had 94 female agents and although my figure as of March 31 was 596, I can report that in the current class, we have our 600th female special agent.

At the same time, I have been increasing the number of attorneys, going from 1,124 to 1,213.

Senator HOLLINGS. You are as diligent as Strom Thurmond.

[Laughter]

Senator HOLLINGS. You are doing good.

Mr. WEBSTER. If you are interested, in addition to the lawyers, there are another 1,183 accountants, we have 1,763 agents with Masters Degrees and 70 Ph.D's.

Senator HOLLINGS. That is excellent.

Mr. WEBSTER. Many of these advanced degrees have been earned on the job.

Senator HOLLINGS. Thank you, Mr. Director,

Thank you, Mr. Chairman. I will leave these other questions for the record.

APPLICANTS FOR AND ENTRANCE SALARY OF FBI AGENTS

Senator **Rudman**. Senator Hollings' questions will be submitted.

Let me just ask you one last question, that I probably know the answer to, but let me find out. What is the starting pay for your agents after they come out of the Academy now?

Mr. **Webster**. If we talk about the AUO, administratively uncontrollable overtime, I believe it is about $30,000.

Senator **Rudman**. Approximately $30,000. Approximately how many applicants do you have? For every job that you have for every applicant you are able to take?

Mr. **Webster**. I will have to make the conversion. We are hiring about 334 this year?

Mr. **Colwell**. About 300 hirings this year. We have 12,000 applications, all qualified and in the computers. They are coming in at the rate of 1,000 a month.

Senator **Rudman**. Senator Hollings, I think that is an interesting ratio. That rate was higher than Harvard's ratio, 12,000 applications for 300 and some-odd jobs, which speaks well of the Bureau.

EXCEPTED SERVICE FOR DEA

Senator **Hollings**. If we can work directly on that DEA difference, they start as a GS–7, your FBI agents start as a GS–10. DEA personnel are civil service, the FBI is excepted service.

Mr. **Webster**. I was not going to bring that up, but since you have brought it up, Senator, that is one of the impediments to putting the two together. We have got to get DEA into the excepted service.

Senator **Hollings**. Yes, sir. Yes, sir.

Senator **Rudman**. It is always a pleasure to have you here, Director. Thank you very much.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

FEDERAL BUREAU OF INVESTIGATION

Drug Involvement

QUESTION:

In 1982, the Attorney General directed the FBI to get involved in drug cases. We are interested in your thoughts on this decision after two years of experience.

What unique contribution is the FBI making to the effort?

Do you believe it is an effective use of all Federal law enforcement resources to have the FBI involved in this type of investigation?

Do you believe you are continuing to cover your other investigative responsibilities adequately given the drain on those resources caused by drug investigations?

Do you believe the FBI is in the drug investigation business permanently? Do you believe it should be?

ANSWER:

In 1982, for the first time in the history of the FBI, FBI resources were put directly into the fight against drugs. The availability of the FBI's 7,000-plus agents and their presence in 59 major cities nationwide and in Legats around the world complemented the efforts of the Drug Enforcement Administration. The FBI brought a great reservoir of skill and experience in complex financial investigations--a must in stopping organized crime's illicit activities in laundering illicit drug money. The FBI also has the necessary equipment and skills to carry out sophisticated surveillances, both physical and electronic--other vital tools in fighting organized criminal groups.

An overall assessment of the status of the war on drugs requires an understanding of the FBI's role in the overall national strategy for the prevention of drug abuse and drug trafficking. Drug law enforcement is but one aspect of the five-point national strategy. Its purpose is to destroy criminal drug trafficking networks, both international and domestic, and to intercept and eradicate illicit drugs which are en route to consumers. The FBI emphasis is directed against drug trafficking by organized crime, drug-related financial crimes, and drug-related public corruption matters. There are 1,076 FBI agents currently working over 2,000 drug cases. Many of these investigations are being conducted with other Federal, state, and local law enforcement agencies. The FBI is strongly represented on the 13 regional Organized Crime Drug Enforcement Task Forces in a coordinated law enforcement assault on drug trafficking.

The FBI has had a significant impact on drug trafficking organizations and individuals. This can be most readily seen through the increasing number of FBI narcotics indictments and convictions. In FY 1983, there were 1,185 individuals indicted and 728 convicted. In

FY 1984, these figures rose to 2,224 indictments and 1,570 convictions. Not only have the numbers of indictments and convictions grown, but the FBI has frequently struck at the root of the drug trafficking problem--the organized criminal enterprise. For example, a recently concluded investigation resulted in 39 indictments of the principals in a Sicilian Mafia heroin trafficking organization. This international group, in five years, had brought over $1.5 billion of heroin into this country. In another series of investigations directed at the nontraditional organized crime groups, over 160 members and associates of outlaw motorcycle gangs were arrested nationwide during February 1985 for their participation in the manufacture and distribution of methamphetamines. These accomplishments underscore the FBI's commitment to continued quality drugtrafficking investigations as one of its very highest priorities.

The FBI has dedicated adequate resources to narcotics cases and established a viable investigative strategy. However, it was necessary to divert personnel resources committed to traditional organized crime subprograms (i.e., Labor Racketeering, Infiltration of Legitimate Businesses, Illegal Gambling, Loansharking, etc.) in order to accomplish the narcotics subprogram's objectives. The FBI will maintain its resource commitment to narcotics and will seek additional resources through budget appropriations to reemphasize traditional investigative activity.

Illegal narcotics activities are international in scope and trafficking organizations within the United States cross state boundaries, causing severe restrictions on the efforts of state and local law enforcement agencies. The scientific, technical, and personnel resources of the FBI, combined with its diverse investigative experience, play an integral part in the total effort of Federal, state, and local law enforcement agencies to investigate and prosecute major international and domestic narcotics traffickers. We believe the FBI should be an essential part of the Government's overall law enforcement strategy against drug trafficking groups.

FBI/DEA Merger

QUESTION:

Do you anticipate a merger between the FBI and DEA within the next year?

ANSWER:

The FBI does not anticipate a merger with DEA within the next year. However, both the FBI and DEA will continue seeking areas in which to expand coordination and cooperative efforts in both investigative and administrative matters.

New Agent Program

QUESTION:

Your agency has received an influx of new agents over the last few years. Please describe your career development program for these new agents.

What type of cases are new agents started on?

Where do you focus your senior investigators?

What size office do your agents start in?

How soon are they transferred?

Where are they transferred?

ANSWER:

The FBI distinguishes between small-to-medium and the Top-12 FBI field offices for purposes of assignment. Small-to-medium offices range from a total of 18 agents (Anchorage, Alaska) to a high of 137 assigned to the Houston Office. Top-12 offices, located in major metropolitan areas of the United States, range from a size of 170 agents to the New York Office which has over 1,000 agents assigned.

Upon completion of training, special agents of the FBI are generally assigned for a two-to-four-year period to one of the FBI's forty-seven (47) small-to-medium field offices. During this first office assignment, special agents are assigned a variety of criminal, security, and applicant matters to acquaint them fully with the wide range of investigative responsibilities of the FBI. Special agents are eligible for transfer to one of the FBI's Top-12 offices upon completion of the two-to-four-year first office assignment. The transfer policy of the FBI is generally governed by the staffing needs existing within these Top-12 offices. The volume of complex investigative matters addressed by these offices requires a constant influx of experienced special agents. Over half the special agents employed by the FBI are assigned to a Top-12 office. Special agents remain assigned to a Top-12 office until eligible for an Office of Preference (OP) transfer. OP transfers are based primarily on seniority and are used to equalize the experience level of all 59 field offices. The transfer policy of the FBI allows for a mix of experienced and nonexperienced agents in all FBI field offices and is meeting the staffing needs of the FBI.

Transfer Policy

QUESTION:

The FBI has a policy of periodic rotation of your agents. Yet, in general, the U.S. Customs Service gives its agents the option of spending their entire career in one location. According to the Customs Service, this allows an agent to really know the area and to get a solid foundation in the community.

What is the reasoning behind your policy?

How do you avoid losing continuity and basic knowledge of the community when you transfer your agents?

ANSWER:

The FBI is a national organization with established national responsibilities and priorities. Agents of the FBI are hired with the explicit understanding that they are available for transfer based on the needs of the FBI. The FBI cannot forecast where its agent resources may be needed in two to three years but must be in a position to transfer personnel if investigative needs dictate.

Transfer policy is therefore flexible by design, to meet both changes in field office staffing needs and changes in direction of national priorities. The FBI is constantly reviewing its special agent transfer policy to minimize the number of transfers.

The FBI is of the opinion that the initial assignment of new agents to small-to-medium offices provides exposure to a variety of investigative matters and testimony in different judicial districts. This training is looked upon as an essential ingredient in preparing a special agent for assignment to one of the Top-12 offices of the FBI. Agents assigned to the large Top-12 offices tend to become more specialized in a specific area; however, the volume of complex investigative matters handled in these offices dictates a constant influx of experienced agents to address these matters.

The special agent transfer policy of the FBI, as now implemented, allows for special agent continuity in all 59 field offices while at the same time enabling the FBI to meet its national responsibilities.

FBI's Training of New DEA Agents

QUESTION:

We understand you are considering training new DEA agents at the FBI Academy.

Have you made a decision on this matter?

ANSWER:

In support of initiatives of both agencies to avoid duplication and improve the effectiveness of investigative operations, a joint study group was assembled in January 1985 to explore the advisability and feasibility of relocating DEA's office of training from the Federal Law Enforcement Training Center, Glynco, Georgia, to the FBI Academy, Quantico, Virginia. While study results indicate that long-term and operational benefits would accrue to both agencies from sharing a common training site, this issue is undecided and is presently undergoing further scrutiny by executive management of both agencies.

If the proposal is approved, it is estimated that the relocation of DEA's office of training could be accomplished with existing funds.

The feasibility of transferring some DEA training programs (DEA's new agents) to the FBI Academy while leaving other training activities at FLETC was discussed at length by the study group and unanimously rejected because a fragmentation of DEA training, staff, and resources would be detrimental to all their training efforts.

QUESTION:

Would that decision be altered if Congress were unable to fund construction of the new dormitory facility at the Academy?

ANSWER:

Without funding for the construction of a new dormitory in the 1986 budget, the inclusion of DEA training at the FBI Academy would necessitate an adjustment of DEA priorities and/or the reduction of certain FBI or general law enforcement training programs.

During 1984, excluding new agents' training, 60 percent of the requests for FBI training could not be conducted due to a lack of dormitory space at the FBI Academy. The proposed third dormitory can be fully justified on the basis of increased FBI training needs in the critical areas of foreign counterintelligence, computer-related training, white-collar crime, organized crime, drug matters, terrorism, supervisory, and undercover training.

The relocation of all DEA training from FLETC would simply aggravate the existing critical shortage of dormitory space at the FBI Academy.

Comprehensive Crime Control Act

QUESTION:

Please describe the FBI's new responsibilities under the Comprehensive Crime Control Act of 1984.

ANSWER:

The 1986 request to Congress includes the annualized resources for the 1985 Comprehensive Crime Control Act supplemental request. The total resources requested in support of the Comprehensive Crime Control Act is 96 agent and 52 support positions.

A breakdown of the 148 positions and the related program justification is as follows:

White-Collar Crime Program

- 113 positions to investigate the expanded jurisdiction under the Act in connection with:
  1) credit card and computer fraud and counterfeit access, with a Memorandum of Understanding between the Secretary of the Treasury and Attorney General;
  2) bank bribery, whereby it is a felony to offer a bribe to any official of a financial institution or for such officials to accept a bribe, in connection with any transaction;
  3) bank frauds under this law covers all parties with any scheme to defraud a financial institution, e.g. check kiting; and
  4) the counterfeiting and forgery of state and corporate securities and international trafficking in goods which bear a counterfeited trademark.

Terrorism Program

- 12 positions to investigate Federal offenses in connection with the damaging of any facility used in the production, storage, transmission, or distribution of electricity, fuel, or other sources of energy; hostage taking; and investigations where hostages have been taken in an attempt to compel a third person or governmental organization to do or abstain from doing any act. The Act covers hostage acts abroad and inside the United States providing that the victims or perpetrators are United States nationals.

Organized Crime Program

- 20 positions to investigate the additional responsibilities related to the use of an interstate commerce facility in the commission of murder for hire in line with AntiRacketeering provisions - murder; and Rackteer Influenced Corrupt Organization (RICO) prosecutions for the mailing of obscene or crime-inciting matter, importation or transportation of obscence matter, and the mailing of indecent matter on wrappers or transportation of obscene matter for sale or distribution. In support of labor racketeering, punitive measures were broadened to change Taft-Hartley violations from a misdemeanor to a felony and following the date of sentence, a convicted union leader now must wait 13 years prior to holding or running for another union position.

Forfeiture and Seized Property

- Three positions to address the increasing workload related to new revisions that have expanded the Government's ability to seize property subject to forfeiture in RICO matters. Property can now be seized provided certain levels of proof are met following indictment. The Government's ability to criminally forfeit real property and other property derived from any proceeds obtained directly or indirectly under the Comprehensive Drug Abuse Prevention and Control Act of 1970 now apply to all violations. The Act also established that any property obtained during the pendency of a narcotics operation was purchased from the proceeds of such operation and, therefore, are subject to forfeiture.

  A new section, under Forfeiture Provisions of the Controlled Substances Act was added that permits the civil forfeiture of real property in whole or in part and any appurtenances which were used or intended to be used in any manner to commit or facilitate the commission of a violation. This significantly increased the Government's ability to seize and forfeit real property. Amendments also increased monetary thresholds for the administrative forfeiture of property in violation of the Act to $100,000 for all property, except conveyances used to transport or store controlled substances.

  The amendment also permits the transfer to participating state and local agencies of Federally forfeited property and provides for the establishment of a Department of Justice assets fund from which expenses may be paid and funds may be obtained for the payment of such things as awards and the purchase of drug evidence.

Background Investigations

QUESTION:

You must spend many workyears conducting background investigations for the White House, the Department of Justice, some Congressional Committees and other Federal agencies. Wouldn't it be a more effective use of Federal resources to turn this responsibility over to other agencies and free up your agents for criminal investigative work?

ANSWER:

The idea of reducing the FBI's role in conducting background investigations for other agencies certainly has some merit to it and, as a matter of fact, we have recently initiated an examination to determine if there are areas where this responsibility can be assigned to other agencies. Preliminary discussions have been undertaken with some of our clients in an effort to identify types of positions for which an investigation by someone other than the FBI would suffice. There are, however, several factors which have to be considered in connection with any such transfer of responsibility.

First, in view of the importance and sensitivity of many of the positions for which an FBI investigation is now done, a determination must be made whether another agency could perform the assignment as effectively as it needs to be done. The persons who will occupy cabinet-level posts in the Administration, who will fill lifetime judicial positions, or who will act as attorneys for the Department of Justice are all going to be exercising considerable influence. The views of clients would be important in resolving whether other agencies have the capability to provide the depth and level of service now available from the FBI.

Secondly, if it is determined that other agencies could assume this responsibility, a question can be raised as to whether there would still be problem areas which the FBI would be in the best position to resolve. If allegations of criminal misconduct or disloyal activity arise, a method of referral to the FBI might be necessary since it may be that the FBI is the only agency with the appropriate resources through which these allegations can be addressed.

A third consideration is whether the FBI would be permitted to retain resources presently assigned to background investigations for other agencies if the responsibility for them is transferred elsewhere. Some do involve reimbursements from other agencies and, of course, the reimbursements would be diverted to the agency performing the work. If the FBI were able to reassign all or part of these resources to criminal investigations, it would appear that Government employment overall would then have to increase since the agency receiving this responsibility would need additional resources to perform the work.

As was mentioned earlier, this topic is under active review and, if it can be determined the FBI can feasibly transfer some of these responsibilities to other agencies, necessary steps will be taken to implement that action.

Hotlines

QUESTION:

How many public corruption hotlines do you have operating at this time? Do you find this to be an effective law enforcement tool?

ANSWER:

A recent survey of all FBI field offices indicated that the FBI is currently operating eleven hotlines to receive public corruption information, among other information. During the period from approximately February 1984 to February 1985, the FBI had a total of thirteen such hotlines in operation. Through contacts with the media and the public, the public is also encourgaged to contact the FBI field offices, whose telephones are answered by FBI personnel twenty-four-hours-a-day every day. The following shows currently operating hotlines:

Current Hotline (3/6/85)

1. Alexandria
2. Atlanta
3. Charlotte
4. Cincinnati
5. Columbia
6. Denver
7. Indianapolis
8. Louisville
9. Norfolk
10. Savannah
11. Tampa

Experience with such hotlines indicates that they are only a marginally effective means of communication as compared to the concerned public locating the telephone number of the FBI field office in the telephone book. The effectiveness of telephonic referral of public corruption matters to the FBI appears to be more dependent upon how much and how often the public is advised of the FBI's jursidiction in this area and not on the type of telephone system utilized to receive the information.

Auto Theft/Bank Robbery Cases

QUESTION:

A few years ago, it was suggested that the FBI might reallocate its resources more effectively by turning over auto theft or bank robbery cases to local police forces. While there was an outcry at the time, there really isn't any reason why you can't turn over cases to competent local law enforcement agencies. What are your policies in this regard? When competent local agencies are available, do you let them handle certain types of cases?

ANSWER:

The FBI will continue to work with state and local law enforcement agencies in the areas of motor vehicle theft and bank robbery investigations in order to obtain the maximum use and benefit from our consolidated resources whenever possible. In the bank robbery area, for example, the FBI's objective is to achieve the maximum Federal and local solution rate and prosecutive results possible. To realize this objective, we have formed joint FBI/local law enforcement task forces in New York City, New Haven, Boston, and other cities to combine resources and attack this crime problem. In other localities, we work directly with state and local law enforcement agencies on a daily basis and through Law Enforcement Coordinating Committees to take full advantage of both Federal and local investigative capabilities in order to obtain the optimum prosecutive results possible.

Motor vehicle thefts have become a multibillion dollar crime problem requiring the concentrated investigative efforts of the FBI working in concert with state and local law enforcement agencies. Our main investigative thrust is directed against career criminals who are operating sophisticated and well-organized theft rings involved not only in the theft of motor vehicles but in multimillion dollar "chop-shop" operations as well. These theft rings and "chop-shops" operate throughout the United States and, without the coordinated efforts of the FBI on an interstate basis, state and local law enforcement agencies could not effectively combat this increasing crime problem. We have conducted many successful joint undercover operations, as well as joint investigative task forces, with state and local agencies throughout the United States.

We are satisfied with our present resource commitment in these areas and the degree of cooperation that exists between the FBI and state and local law enforcement agencies to combat motor vehicle theft and bank robberies.

Organized Crime Grouping

QUESTION:

According to supporting exhibits, 28% of agent time spent on organized crime task force investigations focused on "traditional groups," 18% on "non-traditional groups," and 53.5% on "all other." What type of organizations do you include in each category?

ANSWER:

"Traditional groups" are considered to be La Cosa Nostra (LCN) and Sicilian criminal organizations primarily involved in the importation and trafficking of heroin.

"Non-traditional groups" are major organizations but not LCN or Sicilian in their make-up. Examples of these groups are the outlaw motorcycle gangs, ethnic groups, and prison-spawned gangs (e.g., La Nuestra Familia, Aryan Brotherhood, Black Mafia, Yakuza, etc.).

The "all other" category encompasses investigations into financial flow or money-laundering activities of significant traffickers. Also included in this category are international drug cartels, such as the Colombian cocaine and Mexican heroin organizations, top-level domestic traffickers having a major impact on a specific geographic area, and investigations which involve the corruption of public and/or law enforcement officials.

National Center for Analysis of Violent Crime

QUESTION:

Please describe the type of research you are doing at the National Center for the Analysis of Violent Crime.

ANSWER:

The National Center for Analysis of Violent Crime (NCAVC) is a law enforcement oriented behavioral science and data processing center designed to consolidate research, training, and operational support functions for the purpose of providing assistance to law enforcement agencies confronted with unusual, vicious, or repetitive violent crimes.

The NCAVC's Research and Development program studies violent criminals, their victims, and crime scenes from the law enforcement perspective in order to gain insight into personalities, to understand the motivations for the behavior, and to examine how the perpetrators have been able to evade law enforcement efforts to identify, locate, apprehend, prosecute, and incarcerate them. Serial and exceptionally violent criminals such as murderers, rapists, child molesters, and arsonists are interviewed.

The ultimate purpose of the research is to provide new information upon which to base the development of innovative, analytical, and investigative strategies and techniques.

To date, members of the NCAVC have conducted empirical research on sexually oriented serial murders by studying the crimes, victims, backgrounds, and personalities of 36 offenders. Indepth interviews were conducted in prisons throughout the country, employing the use of a 57-page research instrument developed for the project. New projects are currently underway to do the same kind of research on 35 to 50 serial rapists and multiple victim child molester-abductors. Other violent criminal offenders will be targeted for research as current projects are completed. Where necessary, the program performs ongoing scholarly probes to specific questions on violent crime and recommends innovative investigative techniques and potential solutions.

The NCAVC includes four investigative fellows from local and state law enforcement agencies. These experienced investigators are studying the techniques developed by the agents in the NCAVC. They are working side-by-side with experienced agent profilers developing their own skills in constructing profiles of what unknown violent offenders should look like based on research data collected on known offenders and ten years of extensive crime analysis experience in the Behavioral Science Unit of the FBI Academy.

They are also learning to develop investigative and interview strategies tailored to the particular type of unknown offender being sought and are actively participating in the research project in which known violent offenders are extensively interviewed.

There follows two examples where the criminal personality profile research has been useful in solving crimes:

LUST MURDER
NEW YORK, N.Y.

Several years ago the body of a 26-year-old Special Education teacher was found on the stairwell leading to the roof of a Bronx public housing project where she lived. She had been badly beaten, strangled, bitten, and mutilated by an unknown assailant.

Investigators of the New York City Police Department and the New York City Housing Police personally transported case materials to the FBI Academy for case analysis. The investigative profilers were advised by these investigators that a Negroid hair was found on the victim.

After careful analysis of victim data and case materials, the New York investigators were advised that the crime was perpetrated by a white male, between 25 and 35 years of age, who knew the victim, and lived in the same apartment complex. These investigators were further advised that research data suggested that the subject would be a high school dropout, own an extensive collection of pornographic materials, and would in all probability have interjected himself into the case and would have already been interviewed.

After reviewing the profile, the New York police investigators compared it to suspects that had already been interviewed. The police determined that a white male, matching the profile, had inserted himself into the investigation but was not a suspect. Using a forensic odontologist, a bite impression was made of the suspect's teeth and compared to the bite mark left on the body of the victim, which proved to be identical. The subject (Carmine Callabro) was later convicted and sentenced to life imprisonment.

SERIAL MURDER
ANCHORAGE, ALASKA

During the Winter of 1983, the FBI was requested by the Alaska State Police to provide a personality assessment of a suspect in a serial murder case. Special agent profilers provided on-site consultation and, after reviewing suspect background information, advised the Alaska State Police that the suspect fit the "profile" of a serial murderer.

The Alaskan investigators were provided with information gleaned from the serial murder research project that was subsequently utilized in drawing up an affidavit used in obtaining a search warrant. The investigators were advised that in all probability the suspect would have in his residence jewelry belonging to the victims, the murder weapon, and a map depicting the disposal sites where victims were buried.

The search warrant was subsequently executed and the jewelry, the murder weapon, and the map were all recovered. The subject (Robert G. Hansen) later admitted his guilt and was sentenced to 451 years plus life imprisonment for the murders of 17 females.

Agent Strength - Five Largest Cities

QUESTION:

How many agents do you have authorized in each of your largest five cities. How many are actually on board? How many are in training? How many were authorized and on board at the end of FY 1984? FY 1983?

ANSWER:

The authorized and on-board agent complements of the five largest offices are as follows:

	April 25, 1985		FY 1984		FY 1983	
Office	Authorized	On Board	Authorized	On Board	Authorized	On Board
New York	1,055	972	979	955	920	916
Washington, D.C.	481	463	476	468	453	446
Los Angeles	429	417	429	420	406	404
Chicago	372	363	365	348	350	353
Philadelphia	312	304	316	307	299	306

The FBI does not maintain continuous statistics on the number of agents in training by office of assignment. However, statistics are maintained by program category on a bureau-wide basis.

For example, during FY 1984, there were 4,476 FBI agents, including 680 new agents, trained in various schools, seminars, working conferences, or symposia at the FBI Academy. In addition, 8,060 agents received an aggregate of 502,480 hours of training in the field and headquarters, and 675 agents received 86,400 hours of specialized (SWAT) training.

Training

QUESTION:

Have you considered charging user fees for the training you provide for state and local law enforcement officials?

ANSWER:

Charging a user fee to state and local law enforcement officials who attend the FBI Academy has been considered and determined to be neither equitable nor desirable.

Student allocations for training at the FBI Academy are made through the FBI's 59 field offices and are based on demographic distribution of law enforcement officers throughout the United States and a demonstrated need for training.

Travel costs to and from the FBI Academy, as well as lodging and meal expenses, have traditionally been considered an integral part of the overall training costs because to do otherwise would inherently discriminate against officers from distant jurisdictions and would place the FBI in the position of serving those departments who can afford the training rather than those departments who need the training. Many state and local jurisdictions would be unable to afford any portion of the cost of training provided by the Academy. This would immediately impact on large metropolitan departments suffering from a declining tax base and a shrinking budget, as well as small rural agencies which have no funds available for training. If the FBI required participating agencies to pay just for travel costs to and from the FBI Academy, it would result in an unequal distribution of training and would inevitably reduce the FBI Academy's General Law Enforcement Training Program to the status of a regional training academy.

In summary, the training offered by the FBI Academy for state and local law enforcement officials is designed as a national training assistance program and requiring local jurisdictions to pay training costs would seriously impair the FBI's ability to make an equal distribution of training opportunities based upon the need for training of the individual agencies.

QUESTION:

How does your program differ from that offered by the Federal Law Enforcement Training Center (FLETC)?

ANSWER:

The FBI is not in a position to comment on the quality or scope of training being offered to state and local law enforcement officials at the FLETC. It is significant to note that the courses offered for state and local law enforcement officers at the Academy are unique in that they cannot be taught through the FBI's Field Police Training Program and are not available at any other location. Examples to this unique training include the FBI National Academy Program, the National Executive Institute, the Law Enforcement Executive Development Seminar, and the numerous forensic courses taught in the Forsenic Science Research and Training Center located at the Academy.

Budget Request for Various Programs

QUESTION:

As of September 30, 1985, what will be the status of your FOIMS program? How much is your budget request for FOIMS for FY 1986? What will that accomplish?

ANSWER:

The FOIMS Northeast Regional Computer Support Center (RCSC) at Ft. Monmouth, New Jersey, is fully operational and supports accelerated FOIMS in the Boston, Philadelphia, Newark, and New Haven field offices as well as the New York and Richmond prototype offices. Ft. Monmouth also has a regional word processing center which supported New York and 18 other FBI offices last year.

The FBI has acquired a site for the Western RCSC at Pocatello, Idaho. A temporary data center with one mainframe computer is scheduled to be operational in June 1985. This temporary data center will provide a test bed for interregional data and file transfer, interlinking regional networks, interregional backup and recovery, as well as providing support for the Los Angeles and San Francisco field offices. Construction of the permanent data center at the Western RCSC will begin in May 1985. The Western RCSC has a word processing center which is currently supporting the twelve western regional offices and other offices as directed.

Baseline FOIMS capabilities, which are case management, automated indices, personnel management, vehicle management, and time capture will be available to all field offices and major resident agencies by the end of FY 1986 under the accelerated FOIMS implementation plan. Full implementation of the FOIMS project is projected for 1989. To meet the field's interim needs for information processing of investigative data, stand-alone microcomputers are being provided to the field. These micros will be tied into the FOIMS network and will have full FOIMS capabilities when FOIMS is fully implemented.

In 1986, the FBI has $43 million available for FOIMS. It is anticipated that this funding will be used for the renovation of field office space, construction of the Mid-Atlantic (MA) RCSC, the lease and/or purchase of software, hardware, and communications equipment, the purchase of ADP furniture for the MARCSC, and the purchase of work stations and printers for the field offices.

QUESTION:

As of September 30, 1985, what will be the status of your voice privacy program? How much is your budget request for voice privacy for FY 1986? What will that accomplish?

ANSWER:

Installation of a complete radio voice privacy system for the Los Angeles Division has been completed and basic voice privacy equipment has been provided to 23 field offices to support surveillance activities. Installation of complete voice privacy systems for the New York, Chicago, Boston, Miami, and Washington field divisions is underway and should be completed in the Summer of 1985. Equipment has been procured and final systems designs are underway for the following 17 divisions: Detroit, Cleveland, Las Vegas, Baltimore, Philadelphia, Newark, Pittsburgh, Kansas City, San Francisco, St. Louis, New Haven, San Juan, Albany, Buffalo, Atlanta, Dallas, and Houston.

The FBI has $18,279,000 available in FY 1986 to complete the procurement effort initiated in 1985 for the following 13 field divisions: San Diego, New Orleans, Phoenix, Tampa, Jacksonville, Savannah, Denver, Milwaukee, San Antonio, Oklahoma City, El Paso, Alexandria, and Minneapolis.

QUESTION:

Last year, you requested that $10 million remain available until expended for research and investigative activities. This year, you are only requesting $3 million. What is the reason for this decrease?

ANSWER:

A total of $10 million appropriated for research related to investigative activities in 1985 will remain available until expended. The amount being requested for 1986 is not being reduced; however, authority is requested to carry over $3 million of the 1986 funds until expended. It is anticipated that the remaining $7 million of the 1986 funds will be obligated in 1986.

Legal Attaches

QUESTION:

Do your legal attaches overseas have diplomatic passports?

ANSWER:

All supervisory special agent personnel assigned to legal attache offices overseas have diplomatic status and passports, with the exception of our representative in Hong Kong. Inasmuch as he is attached to a consulate rather than an embassy, he has only an official passport. All of our support personnel overseas have official passports.

QUESTION:

Have you executed a Memorandum of Understanding with the Office of Inspector General at the Defense Department? If not, what is the hold up?

ANSWER:

A Memorandum of Understanding between the Departments of Justice and Defense relating to the investigation and prosecution of Governmental fraud matters was signed on August 14, 1984.

QUESTION:

Do you still intend to replace your legal attaches' teletype equipment in FY 1986?

ANSWER:

Yes, the FBI still intends to replace the legal attaches' teletype equipment in FY 1986.

Internal Investigations

QUESTION:

How are internal investigations on your own agents handled?

ANSWER:

The Office of Professional Responsibility (OPR), Inspection Division, is responsible for investigating allegations of serious misconduct on the part of FBI employees. Each Assistant Director or Special Agent in Charge is required to report immediately to OPR any allegation of serious misconduct by an employee. Upon receipt of a complaint, OPR determines if OPR personnel will conduct the investigation or if the respective division head will conduct the investigation under the supervision of OPR.

OPR reports the results of investigations concerning alleged criminal conduct to the Department of Justice (DOJ) for any prosecutive action warranted. If DOJ declines to prosecute, the results of the investigation are reported to the Administrative Services Division, FBIHQ, for adjudication and appropriate administrative action.

During a criminal investigation, the employee suspected of criminal conduct enjoys the same constitutional rights and privileges as any other citizen. However, if the investigation is administrative in nature (i.e., no criminal conduct or prosecution was declined), the employee cannot remain silent, and is compelled to candidly respond to all questions.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

FEDERAL BUREAU OF INVESTIGATION

Foreign Counterintelligence

QUESTION:

On page 89 of the justifications, there is a priority ranking. The highest ranked program is Other Field Programs, which includes the funding for foreign counterintelligence. Am I correct that in every year since the priority rankings have been included in the justifications, this program has had the highest ranking?

ANSWER:

Since the FBI began ranking its programs as a part of the budget, the Foreign Counterintelligence Program has consistently been the top-ranked investigative program within the FBI.

Budget Request

QUESTION:

How does the amount now requested by the FBI differ from the amount originally requested for FY 1986, by program?

ANSWER:

The total FY 1986 direct funding request to the Office of Management and Budget (OMB) included 9,719 special agent positions; 13,153 support positions; 22,872 total positions; and $1,360,853,000 in budget authority. The FY 1986 program increase request to OMB included 619 special agent positions; 1,173 support positions; 1,792 total positions; and $199,185,000.

A summary of the FBI's FY 1986 program increase requests to OMB is shown below:

Decision Unit	Positions			Budget Authority (000)
	Agent	Support	Total	
Other Field Programs	160	440	600	$56,202
Organized Crime	212	299	511	19,114
Organized Crime Drug Enforcement	103	108	211	6,066
White-Collar Crime	119	102	221	6,069
Training	...	...	...	13,120
Forensic Services - Federal	...	6	6	521
ADP/Telecommunications	1	149	150	24,034
Legal Attaches	2	2	4	239
Technical Field Support & Equip.	...	2	2	55,965
General Law Enforcement Training	10	14	24	1,709
Forensic Services - Non-Federal	...	2	2	44
Fingerprint Identification	...	...	...	6,252
Criminal Justice Data and Statistics Services	...	27	27	981
Executive Direction and Control	7	4	11	522
Administrative Services	5	18	23	8,347
Total FY 1986 Program Increase Requests	619	1,173	1,792	199,185

Reprogramming

QUESTION:

In your statement, you allude to "some modest reordering of funding in FY 1986," which in view of the previous short-falls in FCI, makes me nervous about the solidness of the FCI request for 1986. How are we assured that by approving the amount requested for FY 1986, it will not be used for lower priority programs?

ANSWER:

The phrase "there may be some modest reordering of funding among programs, as we proceed to and through FY 1986...," was used for the following reasons:

1) The FBI's FY 1986 resource needs identified to the OMB were substantially greater than those now pending before Congress. Although supporting fiscal constraint as shown in the FBI's request to Congress, flexibility in the usage and deployment of available resources must be available.

2) Initiatives directed at avoiding duplication and effecting economies and efficiences in FBI/DEA operations may cause expenditure of funds in areas which from those shown differ in the FBI's pending request.

3) Recent (FY 1983 through FY 1986) resource increases appropriated to the FBI have been predominantly for field investigative programs and ADP/Telecommunications. The Executive Direction and Control and Administrative Services programs have not received proportional increases. Should the Administration's proposed 10 percent reduction in these programs not be restored, the flexibility to transfer funds from other areas to these vital programs is required.

Any reallocation of funds meeting the reprogramming criteria of the Congress will be reported promptly.

Program Changes

QUESTION:

Last year the staff worked out a system for the FBI to give us early warning of major changes in the FBI's program. Are those arrangements still satisfactory to the FBI?

ANSWER:

The agreement was that appropriate staff would be advised, on a quarterly basis, of any major investigative staffing utilization deviations from the budget, which, if sustained throughout the remainder of the fiscal year, would result in an end-of-the-year reprogramming. This arrangement is still satisfactory to the FBI.

Impact of No Five Percent Pay Cut

QUESTION:

Your budget proposal includes a projected decrease of $21,518,000 for a five percent cut that will not be approved by Congress. Since the overall constraints on the budget probably will not alllow us to appropriate more than the agency requested, what will be the impact on workyears and by program of absorbing this amount?

ANSWER:

The proposed five percent pay reduction of $21,518,000 represents 3.2 percent of the FBI's estimated personnel compensation requirement for 1986. If the reduction for the pay cut is not restored, the FBI would lack sufficient funding for approximately 763 workyears.

The specific programs which will lose the workyears have not been identified; however, all investigative and support programs will be affected in varying degrees.

Bank Robberies

QUESTION:

What is the FBI's current policy on investigating bank robberies and how does that compare to former policies?

ANSWER:

FBI Special Agents in Charge have been instructed to develop bank robbery investigative plans for their respective territories. In formulating such plans, Special Agents in Charge are to consider such factors as the number of offenses experienced, the capabilities and resources of state and local law enforcement agencies, the nature of local crime problems being encountered, Federal and local prosecutive resources and guidelines, and other salient factors. Plans are worked out in cooperation with input from state and local law enforcement agencies and may include an agreement as to the types of cases or circumstances in which primary investigative responsibility is given to either the FBI or state and local agency. Bank robbery plans are required to provide for an immediate investigative response to each reported violation of the Federal Bank Robbery and Incidental Crimes Statute. We believe such a response is essential toward realizing our goal of achieving the maximum Federal and local bank robbery solution rate and prosecutive results possible. After the initial investigation, the facts of the case are reviewed and, according to any agreements among the FBI, state and local law enforcement investigating agencies, the FBI either assumes primary investigative responsibility or provides assistance and other support requested by the local law enforcement agency who takes the lead role in the investigation.

The above policy differs from previous policy principally in the area of assumption of investigative responsibility after the initial law enforcement response. Previously, the FBI maintained a position of primary responsibility in virtually all cases, which sometimes led to inter-agency rivalry and duplication of investigative efforts. We believe that the current approach allows the FBI to insure that local bank robbery problems of communities are addressed, while pooling Federal, state, and local resources to obtain maximum effectiveness and eliminate duplication of effort.

QUESTION:

How many workyears did the FBI devote to bank robberies in FY 1984 and how does that compare to the amount five and ten years ago?

ANSWER:

During FY 1984 the FBI used 396 agent workyears for bank robbery and related investigations. Five years ago, in FY 1979, 421 agent workyears were used for these type of cases. Workyear data for 10 years ago are not maintained.

QUESTION:

We understand that the FBI maintains bank robbery units. At how many locations are there such units and how is the establishment of these units determined?

ANSWER:

In two field offices--Los Angeles and New York City--the FBI maintains full-time bank robbery squads. In other field offices, these cases are worked by squads that also carry other investigative responsibilities. Additionally, the FBI uses joint task forces in New York City, New Haven, and Boston to handle bank robbery matters. The establishment of the squads in our Los Angeles and New York City field offices was made in recognition of the volume of bank robbery activity encountered in these areas. During 1984 these two field offices accounted for approximately 30 percent of the Federal Bank Robbery and Incidental Crimes Statute violations reported. Joint task forces are used to combat an increase in the number of offenses in an area, as in New Haven for the State of Connecticut, or to focus on a particular problem, such as armored truck robberies in Boston.

Law Enforcement Bulletin

QUESTION:

Section 2901 of the Deficit Reduction Act of 1984 required agencies to make reductions in public relations, printing, consulting services, and travel. Pursuant to Section 2901, the FBI has proposed a rescission of $3,505,000, including a $1,074,000 in public affairs, public relations and advertising activities. There was concern that such a reduction would cease publication of the Law Enforcement Bulletin (LEB) and eliminate the publications unit.

1. How long has the LEB been published?
2. What is the intended audience of the LEB?
3. We understand that LEB has a circulation of 66,000. How do the subscribers break down between Federal and non-Federal and what determines the distribution of copies?

4. The February 1985 issue of the LEB leads off with an article about the Detroit Ministation Experience. Isn't that the type of information we created the office of Justice Assistance to disseminate so that the FBI could concentrate on internal security, organized crime and drug traffickers?

ANSWER:

The FBI Law Enforcement Bulletin (LEB) has been published continuously since 1932. (In 1935, it got its present name).

The intended audience of the LEB is the law enforcement community, including local police officers, county sheriff's departments, state police, Federal officers, and criminal justice educators.

The 66,000 copies represent the print run of the LEB. Surveys indicate total readership of over 500,000. Copies are furnished to larger police departments at a rate of one copy per ten officers. Four thousand copies are distributed to the approximately 8,000 FBI agents and a few thousand more copies go to other Federal investigative agencies. But the great majority of copies go to local police agencies.

In the 50 years of the LEB's existence, this publication has functioned as an invaluable addition to the FBI's training program for local police mandated by Congress in the FBI budget. It has served as a clearing house for law enforcement techniques and as a professional journal of policing not duplicated in the Federal field or in local policing. The Ministation article is an example of a successful police administration technique developed and tested in Detroit that the Detroit Police Department furnished the LEB, on their own initiative, in view of the LEB's role as a medium of exchange of information among police departments around the country. Internal security, organized crime, and drug trafficking are among the FBI's investigative priorities and the LEB has run appropriate articles on various phases of these topics.

Representation

QUESTION:

Last year the committee provided the FBI with its own allowance for representation. FY 1986 the Department is proposing a total allowance that includes the FBI.

1. Has the FBI found having a separate allowance for representation to be helpful?
2. While you certainly must support the budget, please supply, for the record, any memoranda reflecting the FBI views when the consolidated representation allowance was under review.

ANSWER:

Just as having a separate appropriation facilitates better planning, budgeting, and control, it is also of benefit to the FBI to have a separate identification of representation funding authority.

The Committee's Fiscal Year 1985 allowance of $45,000 to the FBI has been of tremendous assistance. As the FBI anticipated, and so informed the Congress last year, the FBI's expanding international coordination, particularly in narcotics and terrorism matters, is necessitating an increase in liaison-type expenditures. Of the $45,000 available, approximately $20,200 (45 percent) has been obligated.

The FBI is unaware of memoranda which might reflect the FBI's views of the consolidated representation allowance.

Motor Vehicles

QUESTION:

Please supply, for the record, a chart that displays the following information on the passenger motor vehicles of the FBI, DEA, INS and Marshals Service: Number of vehicles? Average amount of mileage on vehicles? Vehicle with the most mileage? Number of vehicles with more than 60,000 miles? Vehicles out of service for last month in terms of vehicles and days? Number of vehicles to be replaced in 1986? Number of additional vehicles in 1986?

ANSWER:

The chart below reflects the vehicular information for FBI, DEA, INS and Marshals Service.

Vehicles	FBI	DEA	INS	Marshals Service
Number	6,858	2,677	1,739	1,227
Average mileage	36,395	41,750	46,673	20,825
Most mileage	130,076	150,850	140,000	95,300
More than 60,000 miles	1,969	1,730	566	113
Out of service last mo.	3,036	Unavail.	334	154
Days out of service	Unavail.	Unavail.	Unavail.	Unavail.
Replaced in 1986	1,300	489	435	263
Additional in 1986	150	63	0	272

ADDITIONAL COMMITTEE QUESTIONS

FOIMS/ADP

QUESTION:

A 1977 requirement analysis performed in the Richmond field office recommended that FOIMS be designed utilizing a mini-computer in each field office; data would not be performed by field offices and the mini-computers would not communicate with each other. Why did the FBI later decide that six large data centers were more cost effective than the stand-alone mini-computers?

ANSWER:

The 1977 requirements analysis predates the first issuance of the FBI's Long Range Automation Strategy which included the regional concept for FOIMS development and implementation plans have always included inter-office communications and data access.

An independent consultant analyzed the Richmond prototype and recommended against the use of minis throughout the field. The use of minis presented unacceptable risks to the FBI. For example, as offices became more and more dependent on automation support for day-to-day activities, a single mini-computer in a field office would present an unacceptable risk because if the computer went down, the office would be unable to meet its mission requirements. The regional approach, however, provides the capability of having multiple machines with some redundancy available so that should a piece of equipment go down, a field office could continue to meet its mission requirements.

Another factor in the adoption of the regional concept for FOIMS is the evolution of FBI requirements since 1977. FBI requirements for complex mathematical models, artificial intelligence embedded in information systems, global queries, and transaction volume could not be met with mini-computers. These requirements can be realized through a distributed data architecture providing local, regional, and global query capability.

In October 1983, the FBI initiated a study to determine the number of regional computer centers necessary to support the FBI's automation initiatives. The FBI contracted Network Strategies Incorporated (NSI) to conduct the study. Based on NSI's report it was concluded that the number of regional centers should be determined after the implementation of the second regional center when the FBI has data available.

QUESTION:

Did the FBI compare the cost benefits of each alternative? If so, provide the analysis which was performed.

ANSWER:

The FBI did not address the cost/benefits of the mini-computer approach to FOIMS because technologically the mini-computer approach was not acceptable. Mini-computers cannot handle the FBI's requirements for global queries, transaction volume, complex mathematical models, and artifical intelligence embedded in automated information systems.

The FBI did contract Network Strategies Incorporated (NSI) to evaluate the number of regional centers required by the FBI. NSI concluded that final determination of the number of required regional centers should be validated upon implementation of the second regional center when actual transaction volume is available. Projections based on these transactions will determine the required number of computer centers necessary to support the FBI's needs.

QUESTION:

The FBI has developed a prototype FOIMS system which it used in the Richmond field office. What has been the experience on (1) system utilization and (2) utilization for administrative applications (such as timekeeping, personnel, vehicle management, and mailing labels) versus case management applications? Does the FBI have quantitative data on Richmond to show whether it realized the productivity gains it estimated could be achieved?

ANSWER:

FOIMS is now an integral part of the operations of the Richmond field office. With respect to investigative matters, the Richmond office manages 100% of all cases on FOIMS. Automated case management includes case assignment, investigative program management, evidence tracking, automated name search, and lead assignment and tracking. FOIMS also supports specialized investigative operations in the areas of organized and white-collar crime. With respect to administrative operations, 100% of all personnel management, vehicle management, automated ticklers, and time capture functions, (time and attendance, time utilization and recordkeeping and AUO) are supported by FOIMS.

Yes, the FBI does have quantitative data on the Richmond Office to show it has realized estimated productivity gains. The original cost/benefits analysis is currently being updated and expanded upon through an independent study conducted by the Institute of Defense Analyses.

QUESTION:

The first regional data center became operational in 1984 with four large mainframe computer systems to support FOIMS. Each center is to have extensive data storage capability. What is the projected transaction volume and number of records on file for each of the six planned centers when FOIMS is fully implemented? Provide the analysis used to estimate the hardware performance and data storage requirements for each data center. Why are six data centers needed?

ANSWER:

The first regional computer support center (RCSC) became operational in 1981 with one computer. It currently has two production systems and one test-and-development computer system. The projected transaction volume of each regional center is estimated at an average of 35,000 to 40,000 per hour of prime time (8:00 a.m. to 6:00 p.m.). The file storage requirements will be approximately 20 Gigabytes (GB) the first year and will grow at approximately 20 GB per year excluding the electronic file. When the electronic file is implemented the storage requirements will increase dramatically.

The projected transaction volume and data storage requirements are based on an analysis of the transaction rates of the Richmond prototype and an extrapolation of those figures to all field office. Additional estimates of multi-regional transactions were added to account for global transaction capabilities.

The hardware and network performance requirements were based on the use of a statistical tool which allowed the FBI to simulate the transaction rates for CPUs, storage, and network combinations.

QUESTION:

The FBI plans to use the Northeastern Regional Data Center to process FOIMS applications for all 59 field offices as they receive equipment. Except for the six field offices in the Northeastern region, the files for each field office will be transferred to one of the five other data centers when they become operational. After all six centers are implemented, will the Northeastern Data Center have enough workload to sustain full utilization of its current capacity?

ANSWER:

The FBI plans to use the Northeast Regional Computer Support Center (RCSC) and the Western RCSC to support implementation of baseline FOIMS functions in FY 1986. Baseline support includes automated indices, personnel management, vehicle management, and time capture. Full FOIMS functionally will include horizontal integration of functions across field divisions and vertical integration of functions at FBI Headquarters with embedded expert system capabilities, complex mathematical/computational models, and global query/processing capabilities. The Northeast RCSC will be fully utilized providing full FOIMS functions to the field in the Northeastern region.

QUESTION:

The FY 1986 proposed budget for ADP and telecommunications shows no planned increases for ADP staff from FY 1985 to 1986. Whereas, the

FY 1985 exhibit showed significant ADP staff increases. Assuming that the FBI still plans to establish its third and possibly its fourth regional data center during this time frame and that current regional data centers are staffed with approximately 60 ADP support personnel each, how does the FBI propose to staff centers three and four? Also, if positions are to be reprogrammed from other activities, please identify these activities and the anticipated number of positions to be transferred.

ANSWER:

Current plans call for completion of the second regional computer support center (RCSC) in the 1985-1986 time frame, the third in the 1986-1987 time frame, and the fourth and fifth in the 1987-1988 time frame.

In the FY 1985 budget, the FBI requested and received an increase of two special agent and 40 support workyears to staff the Western RCSC.

A study was done by the Office of Program Evaluations and Audits (OPEA) which determined that the required staffing level for each RSCS, not including word processing or data entry personnel, is 64 support and three special agent workyears. As a result, in the FY 1986 budget, the FBI requested an increase of 60 workyears to staff the regional computer centers. This included one special agent and 24 support workyears for the Northeast RSCS, an increase of one special agent and 24 support workyears was requested for the Western RCSC, and eight support and two special agent workyears for the Mid-Atlantic RSCS. Also, in FY 1986, an increase of 30 support workyears was requested for field office computer assistants. Industry statistics show that this type of position historically resolves 85 percent of user problems, including applications, operations, and procedures.

The Department of Justice approved the FBI's FY 1986 requested personnel increases; however, this enhancement was subsequently disallowed by the Office of Management and Budget.

The FBI plans to resubmit these personnel requests in its FY 1987 budget request.

QUESTION:

The FBI plans an extensive telecommunications network linking field offices and headquarters with the data centers. What is the estimated cost of the network? What traffic volume is estimated for the total network and each data center?

ANSWER:

It is projected that the cost of the network will be $6,085,000 in FY 1985 and that the annual cost for such services will grow to $18,464,000 by FY 1990. The projected transaction volume for each regional center is estimated at 35,000 to 40,000 per hour during the prime time period of 8:00 a.m. to 6:00 p.m.

QUESTION:

How was the traffic volume calculated? Provide the analysis used to support network design and performance requirements.

ANSWER:

The transaction volume was based on extrapolation of statistical data from the Richmond and New York prototypes and the integration of manual transaction rates which are currently compiled for all field offices.

A computer modeling technique utilizing this current data with a projected growth rate was used to project transaction volume of cases, indices, and communications.

QUESTION:

Why does FOIMS require a secure, encrypted communications line for administrative and case management applications? Do investigative reports contain highly NSA classified data? What is the estimated added cost percent for data encryption, tempest-shielded computer equipment, and fiber optic communications lines? Did the FBI perform a vulnerability assessment of the need for these security measures?

ANSWER:

The investigative files of all field offices contain information about persons, which must be protected under the provisions of the Privacy Act as well as information about national security matters including the FBI's Foreign Counter Intelligence program and counter-terrorism activities. Information from these files is indexed and made available to all special agents through the FOIMS. The ability to access this sensitive information in a timely manner is crucial if the FBI is to continue to carry out its mission effectively.

The FBI, which has expertise in countermeasures, has conducted appropriate risk analyses. The results of these analyses and national security regulations mandate specific security measures. A task force has been formed and efforts have been initiated to update the FBI's security risk analysis to take into account new technologies and techniques available which can compromise automated data processing and telecommunications (ADPT) systems.

There is much more to ADPT security than "data encryption, tempest-shielded computer equipment, and fiber optic communications lines." ADPT security includes operating system software, applications software, and the most important feature, operating procedures which are built into the system to provide the appropriate security. Each specific security feature is evaluated on the basis of both risk and cost; however, it is anticipated that overall security and internal control features will account for approximately 10 percent of FOIMS' costs. This will amount to approximately $20 million by the time FOIMS is fully implemented.

QUESTION:

The FBI plans to use IBM's Systems Network Architecture (SNA) telecommunications network architecture to link FOIMS users with the data center. This will apparently require the new hardware which the FBI plans to procure to have a degree of compatibility with the SNA network. What impact will this have on competitive acquisition of computer hardware?

ANSWER:

The FBI would have to acquire new telecommunications control equipment no matter which telecommunications network architecture was used to implement the FBI's distributed data architecture. Since several telecommunications equipment vendors can handle SNA protocol, the FBI's selection of the SNA architecture will have no impact on the competitive acquisition of computer equipment.

QUESTION:

We understand that FOIMS is being designed to take advantage of present and future advances in data processing technology; however, FBI chose a data base management system called ADABAS which was developed in Germany during the late 1960s and licensed for use in this country in 1971. A software contractor is currently developing a software system called ADABAS-VTAM to adapt ADABAS to a distributed data base network environment. Why was ADABAS chosen, and how do its design features compare with more recently developed data base systems in meeting the FBI's performance requirements? What other data base systems were considered? Was any comparative technical analysis performed? Does the FBI have any test data on whether ADABAS-VTAM will meet its requirements?

ANSWER:

The FBI conducted a feasibility study in 1981 to select a data base management system (DBMS). The study determined that only commercial DBMSs would satisfy FBI requirements. Those commercial DBMSs with the ability to satisfy functional, technical and operational requirements during the time of the evaluation were ranked using criteria quantified by using classical Operations Research techniques (e.g., Delphi technique with interval estimators and statistical analysis). The results conclusively demonstrated that ADABAS DBMS was consistently ranked above MAX, M204, System 2000, INQUIRE and DATACOM/DB. ADABAS was the only DBMS which had the ability to interface with INTELLECT, a software package marketed by Artificial Intelligence Corporation, to perform on-line queries using English-like statements. ADABAS also had the ability to use, high-level, procedural language called NATURAL. Other DBMSs have now developed the capabilities; however, no agency or corporation can afford to change its DBMS environment each time an available DBMS changes its capabilities.

ADABAS has continued to evolve based on the priority established by Software AG's ADABAS Users Group. As a user of ADABAS, the FBI maintains on-going in-depth technical discussions with Software AG. As the FBI implements the distributed data architecture with the opening of the Western Regional Computer Support Center, ADABAS-VTAM's effectiveness on supporting local, regional and multi-regional queries will be monitored closely. The FBI funded an independent evaluation by the Mitre Corporation which validated the FBI's choice of ADABAS-VTAM.

The FBI is confident, through the system of evaluation and evolution, that ADABAS will continue to support its operational needs in a distributed data architecture environment.

QUESTION:

In FY 1984, the FBI planned to release a Request for Proposal (RFP) for automation equipment to support FOIMS through the 1990's. What is the current status of the RFP? What specific reasons are causing the delay?

ANSWER:

The FBI is re-evaluating its functional requirements based on a continuing process to refine the computer system architecture to address additional requirements and to provide for Artificial Intelligence and advanced computing technologies.

The Request for Proposal should be issued in September, 1985.

QUESTION:

What are the system performance requirements for (1) response time to user queries, (2) transaction throughout, and (3) reliability?

ANSWER:

The FBI establishes response time goals for different types of transactions. For example, the goal for retrievals is from 1 - 3 seconds; and update 3 - 5 seconds. FOIMS is being designed, developed and implemented to provide fault tolerant processing, one regional computer support center (RCSC) will provide back-up at a reduced level of support should a failure occur in another RCSC. Transaction throughout will be measured and evaluated when the multi-regional prototype is implemented between the Northeastern and Western RCSCs.

QUESTION:

Do the Burroughs microcomputers installed in some of the field offices interface with FOIMS? If so, are they protocol compatible with the SNA network? If not compatible, how is the interface achieved, at what cost and what effect on user response time?

ANSWER:

The Burroughs workstations interface with FOIMS and are compatible with SNA telecommunications network architecture.

QUESTION:

FBI has encountered several legal problems while acquiring its standard terminals to support automation activities both at headquarters and its field offices. Please identify the current status of this acquisition and state whether additional acquisitions are planned to satisfy the original terminal requirements as stated in the Request for Proposal.

ANSWER:

The FBI currently has 1,817 Burroughs terminals located throughout FBI Headquarters, the Northeast and Western Regional Computer Support Centers, every field office, and in many resident agencies.

Aside from the legal problems, FBI functional requirements for a professional workstation have changed and a new Request for Proposal (RFP) will be issued within a month. Some of the changed requirements include the capability for voice input, icons, windows, etc. Many of these new requirements are being driven by the need to support expert systems and decision support capabilities.

QUESTION:

A comparison of the FBI budget exhibit submissions for FY 1985 and 1986 shows that FBI has significantly revised its acquisition plans. For example, in the exhibit for the FY 1985, budget FBI's total ADP and telecommunications acquisitions (excluding FM radios) for 1985 and 1986 are $224 million. Whereas, the FY 1986 exhibit for the same two fiscal years, shows ADP and telecommunications acquisitions (excluding FM radios) as $259 million. What are the reasons for the $35 million increase in ADP and telecommunications acquisitions for these two fiscal years?

ANSWER:

The FBI's Automatic Data Processing and Telecommunications (ADPT) Program is funded for $130,222,000 in FY 1985. The FY 1986 budget request for ADPT is $137,597,000.

The FY 1984 budget included $35,000,000 in two-year funding for the Automated Identification Division System. This acquisition was deferred until January 1985.

QUESTION:

According to FBI representatives the current plans are to maintain all FBI automated criminal files on an on-line system for immediate access by FBI agents and support personnel. Such a requirement would appear to have significant automation cost impact. Please summarize what alteratives have been considered to an on-line system for historical data? What are the long-term cost impacts? What trade-offs will the Bureau make if historical data is moved to an off-line system?

ANSWER:

FOIMS is the cornerstone of the FBI's automation strategy. It will provide horizontal integration of the FBI's investigative and administrative functions across the field divisions and vertical integration of management and decision making functions at FBI Headquarters. A pilot FOIMS application was implemented in the Richmond field office and preliminary cost/benefits were encouraging. This preliminary effort demonstrated that the current manual indexing processes involve 65 percent redundancy.

The FBI has recently contracted with the Institute for Defense Analysis (IDA) to perform an in-depth cost/benefit analysis of FOIMS. IDA will determine costs, benefits, measures of effectiveness, as well as the impact of automation on the FBI. Included in this analysis will be the costs of maintaining criminal files on an on-line basis and the benefits realized such as eliminating multiple file redundancy throughout the FBI. The most important result of this effort will be the determination of increased investigative effectiveness as a result of FOIMS.

Current plans do not call for the full conversion of historical data to automated form. The FBI has already conducted a study and determined that the value of indices diminishes with time.

QUESTION:

What is the cost of full case text in terms of computer hardware and data storage requirements, versus the cost of summaries?

ANSWER:

The cost analysts from the Institute for Defense Analysis (IDA), now performing a cost/benefits analysis of FOIMS, immediately recognized that the preparation of investigative case summaries is a labor intensive operation and is high in cost. Equipment required to support full text storage is inexpensive and will become many times less expensive over the next five years. IDA will examine the costs and benefits attributable to full case text.

QUESTION:

FBI has been converting the headquarters manual active index to a machine readable, on-line system for several years. Please identify when this phase of the conversion project will be completed. Also, when will this project be converted to the ADABAS data base environment and at what point in time is it anticipated that field office agents and support personnel will have direct inquiry capability into automated headquarters active index?

ANSWER:

As of this month, the on-line automated FBI Headquarters (FBIHQ) General Index will be capable of searching over 16 million records. This conversion goal was previously set for 1/1/86. This project will be converted to ADABAS and it is anticipated that base-line FOIMS capabilities will be implemented throughout the field by the end of 1986. The Automated Records Management System conversion to ADABAS will coincide with the scheduled prototype of the distributed data architecture (using the Northeast and Western regions). This will include a standard index which is shared by both the field offices and FBIHQ by the end of 1985.

QUESTION:

Please state whether the implementation of the FOMIS as envisioned with distributed data bases and distributed data processing, will eliminate the need for a headquarters index file, except for those FBI cases initiated by FBI headquarters operations and, if so, when?

ANSWER:

The need for an FBI headquarters index file will continue. The more active historical records are being converted to automated form to support the National Name Search Program; the remaining manual indices are required to support applicant checks, and Freedom of Information Act (FOIA) requests as well as name search requests. It should be noted that approximately 5,000 name checks are made each day for national security purposes.

FOIMS will provide the potential to eliminate 65 percent of current indexing workload. Each investigative matter will be managed by the field office originating the investigation. The originating office will be responsible for creating and maintaining the automated indices for that case. All auxiliary offices and FBIHQ will then access these indices via a secure telecommunications network and distributed data architecture and will not have to create duplicate/redundant indices.

A quantitative analysis will be conducted to determine if portions or all of the field offices indices will be maintained on-line at FBIHQ to support operational requirements.

QUESTION:

Based upon current data, FOIMS and the Automated Records Management System (ARMS), will have duplicative data from the field offices and the Records Management Division until the universal file number system and possibly the distributed data base architecture is implemented. What are your current plans for the implementation of the universal file numbering system? Have there been studies to identify the extent of the duplicative automated data that will exist between FOIMS and ARMS? How will the duplicative data be purged from the integrated system?

ANSWER:

Current plans call for the implementation of the universal file numbering system once base-line FOIMS has been established Bureau-wide.

Under the current manual system up to 65% of all indexing files are redundant. This duplicative indexing would be eliminated under a distributed processing system with a common index and a Universal File Number. The degree of duplication between FBIHQ and the field for other types of files varies substantially based on the type of case and other considerations. Under the distributed data architecture environment, data will be entered into the system at a single point. This data base will be available for query, through the telecommunications network, by all users. However, from a performance standpoint it may be more efficient to extract and store locally individual data elements that will be utilized to generate statistics or reports. There is no way, to estimate exactly what percentage of the data will exist in duplicate form until performance statistics are gathered from prototyping the distributed data architecture.

QUESTION:

The FBI has undertaken site and facilities preparations at the Northeast Regional Data Center. What is the total cost to prepare this center for operations? What are the specific major expenditure items associated with total site preparation?

ANSWER:

The site and facilities preparation of the Northeast RCSC were completed in three phases:

Phase I, costing $300,000, built the interim data processing center. Phase II, costing $3,200,000, funded emergency power requirements and the secure primary data processing center which supports all data processing in the Northeast Region. Phase III, costing $5,400,000, funded the network control center, tape library, and renovation of 70,000 square feet to support the regional word processing and data entry facilities.

QUESTION:

The Northeast Regional Data Center includes housing and training facilities exclusively to support the training of computer operators who will work at the various regional data centers, as they become operational. What is the total expected number of computer operators to be trained? What were the results of the cost/benefit analysis to support setting up a dormitory facility at the Northeast Regional Data Center?

ANSWER:

The Northeast Regional Computer Support Center (RCSC) includes minimal facilities to support training of all types of field personnel in the implementation, operation and maintenance of FOIMS. All field personnel must be trained and most are being trained on-site in the field offices. However, resource constraints dictate that some training be performed at the Northeast RCSC. A mock field office, which will have full FOIMS functions, has been installed in the FBI Academy. Arrangements are being made to have new special agents and other FBI personnel undergoing training at the Acadmeny trained in the operation of FOIMS and all other major information systems. The Institute for Defense Analysis has been requested specificially to conduct a cost/benefit analysis of FOIMS training requirements. It is anticipated that field personnel will eventually obtain training in the field office through an on-line computer based training system with embedded expert systems capabilities.

QUESTION:

FBI has listed under its major objectives for Other Field Programs, "To develop an analytical and managerial capability to identify and respond to crime problems and trends at the local and national levels; determine resource needs for these programs within individual fields; and assist in the strategic allocation of appropriated resources." What specific activities does FBI have underway, or have planned, to support this objective? How is, or will, automation be used to support this objective?

ANSWER:

The major objective referred to concerns program management initiatives and activities within the four investigative components--Fugitive, General Government Crimes, General Property Crimes, and Personal Crimes--that from the FBI's General Crimes Program. Specific activities supporting this initiative include the following:

Resource Management and Allocation. Annually, each field office responds to a resource management and allocation survey that solicits information describing local crime problems being experienced, identifying the office's priority criminal activity and major objectives/activities planned to address these problems, estimating the number of workyears required for the next year, summarizing Federal prosecutive guidelines pertaining to program areas, and other items requested by headquarters program managers. The purpose of this survey is twofold. First, it serves as a vehicle for obtaining information needed by headquarters managers to evaluate, on a continuing basis, program investigative efforts and results within the four General Crimes Programs. Second, the survey helps field office managers to identify major local crime problems and focus FBI resources toward these areas. Such a process requires continual contact and exchange of information with local and state law enforcement agencies and participation on Law Enforcement Coordinating Committees and with other groups to insure our efforts are being directed toward the most serious crime problems being experienced within a community or region. Our field program managers must be able to detect and respond to changes in local crime rates.

Budget Formulation. The information submitted on annual surveys is also used to estimate requirement use for future years and formulate budget submissions.

Field Office Staffing. Survey data are also used in conjunction with annual reviews of field office staffing levels conducted by headquarters program managers. These reviews are performed in order to insure that appropriated resources are being used effectively and efficiently and to adjust staffing levels due to increases or decreases in individual office workload.

Automation is used to support these activities. Data collected by the FBI's Resource Management Information System, the General Property Crimes Data Base, and Bank Crime Statistics Data Base are used by headquarters program managers to prepare analyses of individual field office program activities. Information provided by field survey responses is used to qualify these statistical measures.

For 1986, the FBI is asking for $153 million and 2,873 workyears for General Crimes Program investigations. The focus of this objective and the above described activities is to insure that appropriated resources are effectively used and managed.

QUESTION:

Please identify the short and long range objectives that the FBI hopes to achieve through the implementation of artifical intelligence (AI) technology in support of investigative initiatives? What impact is the introduction of AI requirements expected to have on the FBI's current acquisition plans?

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Please identify the short and long range objectives that the FBI hopes to achieve through the implementation of artifical intelligence (AI) technology in support of investigative initiatives? What impact is the introduction of AI requirements expected to have on the FBI's current acquisition plans?

ANSWER:

In 1984, the Director approved an initiative to apply AI to support several high-priority investigative needs. The FBI plans to apply AI in the form of knowledge-based expert systems techniques to selected priority investigative programs involving labor racketeering, narcotics intelligence processing, and counter-terrorism. Moreover, expert systems techniques will be applied to achieve advanced name-searching capabilities in all information systems and improved quality assurance in NCIC. These approaches involve eliciting functional knowledge and expertise from substantive experts in specific areas of interest; codifying this knowledge into a form (logic rules) which can be processed by computer; and developing an operational information system combining rules, investigative data, and additional logic to draw inferences about the subject matter (e.g., linkages among terrorist groups, likelihood of La Cosa Nostra involvement in union pension fund fraud, identification of aircraft in narcotics smuggling) and to explain automatically the chain of data and logic leading to the outcome.

New requirements resulting from AI initiatives are being incorporated into the Request for Proposal for the Advanced Professional Workstation and the Resource Acquisition Project.

QUESTION:

FBI has stated that contractual efforts to support the redesign of the National Crime Information Center (NCIC) are underway. Please identify what new user needs (including FBI's internal needs from the system) have been identified and what concurrence has FBI received from the law enforcement community?

ANSWER:

The statement of work for the NCIC study, which was approved by the Advisory Policy Board, requires the contractor to identify functional requirements through the year 2000. The Long Range Planning Committee of the APB has reviewed and endorsed the Statement of Work and will review progress and products at each major milestone.

Administration and Management Reduction

QUESTION:

How can the FBI significantly increase the number of investigators, and then reduce their Executive Direction and Control and Administrative Services by 10 percent? Do these new resources require those services? How do you maintain the quality or timeliness of Executive Direction and Control and Administrative Services with across-the-board cuts--especially when your own justification cites the need for increased headquarters control of sensitive drug investigations?

ANSWER:

It will be most difficult for the FBI to significantly increase of number of special agents, while at the same time reducing the Executive Direction and Control and Administrative Services Decision Unit by 10 percent.

The FBI is supportive of the Administration's efforts to control and reduce the deficit; however, in taking any reduction it would be most advantageous if the FBI were allowed the flexibility to sustain the reduction in programs where the impact will be less disruptive to the organization. To sustain a reduction of $2.546 million in the Executive Direction and Control Decision Unit would require reducing 55 workyears at an average cost of $46,436 per workyear. Since all nonpersonnel funding in this decision unit is attached incrementally to workyears in the program, to mandate such a reduction would diminish the FBI's responsiveness to public affairs matters, legal activities, audit and program evaluation reviews, budget and accounting functions, and general management direction.

Likewise, to diminish the Administrative Services Decision Unit by $2.425 million would require that workyears be reduced. Nonpersonnel dollars in this decision unit are incremental to personnel; therefore, reducing this amount of funding would cut 76 workyears from this decision unit. This reduction would diminish the FBI's effectiveness and efficiency in performing certain support services to field operations. These services include procurement, facilities maintenance, personnel management, and voucher and payroll processing.

The ten percent administrative reduction translates into a personnel reduction in the Program Direction activity of approximately 131 employees.

If this reduction could be absorbed in a nonspecified area, the FBI would likely reduce its procurement of equipment-related items to avoid personnel reductions. These planned equipment purchases could be delayed until future years, and would be less likely to impact the overall effectiveness and daily operations of the FBI.

Undercover Operations

QUESTION:

How much money was collected in 1985 from undercover operation businesses and then used to defray the cost of the operations? How much was returned to the Treasury?

ANSWER:

As of February 28, 1985, FBI field offices reported using $157,471.44 of income collected from all investigative programs' undercover businesses to defray the cost of undercover operations for FY 1985. Also in FY 1985, $428,623.74 of income earned by undercover businesses has been returned to the U.S. Treasury.

In addition to the above, $85,779.00 in interest income earned in 1985 by undercover business operations and $704.34 from income earned in an undercover operation that was terminated in FY 1984, have been returned to the U.S. Treasury.

QUESTION:

What is the total amount of funds that have been expended to settle claims or lawsuits resulting from FBI undercover operations? What is the amount of pending lawsuits and how much do you expect those to cost?

ANSWER:

To date, a total of $2,031,537 has been expended to settle claims or lawsuits arising out of FBI undercover operations. Fifteen lawsuits arising out of undercover operations are currently pending. It is not possible to predict with certainty what additional costs, if any, will result from these pending lawsuits. It is expected that a number of them will be dismissed prior to trial. Moreover, the damages sought are excessive in terms of possible exposure to liability.

QUESTION:

What precautions does the FBI take to ensure that innocent people or businesses are not adversely affected by undercover operations? For example, in operation RECOUP some automobile dealers who were not involved in the operation brought cars that Government officials apparently knew were stolen and later recovered, providing no compensation to the affected dealers. How many lawsuits have resulted from the operation? How many have been settled? At what cost?

ANSWER:

In its review and evaluation of undercover operations (UCOs), the Criminal Undercover Operations Review Committee carefully assesses the contemplated benefits of the UCO, concomitant with the potential risks, liabilities, and the suitability of the proposed operation. In assessing the UCO, the committee considers, where relevant, the following factors, among others:

(1) the risk of harm of private individuals or undercover employees;

(2) the risk of financial loss to private individuals and businesses, and the risk of civil liability or other loss to the Government;

(3) the risk of harm to reputation;

(4) the risk of harm to privileged or confidential relationships;

(5) the risk of invasion of privacy;

(6) the degree to which undercover employees or cooperating private individuals may engage in illegal activity; and

(7) the suitability of undercover employees or cooperating private individuals participating in activity of the sort contemplated during the UCO.

If the proposed UCO involves any of the sensitive circumstances listed in Section B of the Attorney General's Guidelines on FBI UCOs, the committee will also examine the proposal to determine whether the UCO is planned so as to minimize the incidence of such sensitive circumstances, and to minimize the risks of harm and intrusion that are created by such circumstances. If the committee recommends approval of an UCO involving sensitive circumstances, the recommendation will include a brief written statement explaining why the UCO merits approval in light of the anticipated occurrence of such sensitive circumstances.

In addition, the committee is responsible for scrutinizing every aspect of an operation, including the nature of the crime problem, the propriety of the scenario to be utilized, the role of the informants, costs to be incurred, business entities to be established, potential liabilities and risks the potential for creating criminal activity, impact on privileged or confidential relationships, and finally, the need for exemptions authorized by the Department of Justice (DOJ) to utilize appropriated funds to lease space; deposit funds in a financial institution; use proceeds to offset expenses; or establish a proprietary. This very extensive review and approval process begins with the field office submitting the proposal, continues in the appropriate section at FBIHQ, and culminates with the Committee review and recommendation to the Assistant Director, Criminal Investigative Division, or in some cases, the Director himself.

The committee consults the Legal Counsel Division of the FBI, and the Office of Legal Counsel or other appropriate division or office in the DOJ, about any significant unresolved legal questions concerning authority for or the conduct of a proposed UCO.

Minutes are prepared for each meeting identifying members present and the significant issues raised with their resolution, followed by the committee's final recommendations with respect to an operation's duration, funding, and scenario.

No operation is approved for more than six months at a time, and many are approved with the stipulation that an interim progress report be made to the committee. UCOs requiring more than six months to complete their objective must be re-presented to the committee for subsequent approvals.

Once undertaken, an UCO is carefully and continually supervised and controlled both by FBI managers at headquarters and in the field and by strike force attorneys or the United States Attorney involved with the operation. Legal issues are considered thoroughly by both FBI and DOJ personnel to ensure the prosecutive success of an operation and to avoid violation of Constitutional rights. In particularly sensitive cases, these legal issues are reviewed at the highest levels of the FBI and DOJ. FBIHQ supervision of operations includes on-site visits to field operations and thorough reviews of the financial aspects of these projects.

Finally, FBI agents used in undercover capacities are carefully screened both by their supervisors and by the Special Agent in Charge in the field and by program managers at FBIHQ.

Those selected for undercover roles are trained to handle their frequently difficult, delicate, and dangerous assignments. Instruction in legal areas related to undercover activities (for example, the law concerning entrapment) receives particular emphasis.

With respect to the conduct of UCOs similar to RECOUPE, certain safeguards have been incorporated into these UCOs to minimize the potential risk of harm to innocent third parties:

(1) Attempts are made to elicit the true identity of a purchaser and establish a conspiratorial relationship between the individuals purchasing a vehicle that passes through an UCO.

(2) Funds are set aside to purchase stolen vehicles after they have passed through the UCO to prevent these vehicles, if possible, from falling into the hands of innocent purchasers.

(3) The FBI is working with the National Auto Theft Bureau to enlist the assistance of affected insurance companies in indemnifying innocent purchasers.

(4) The duration of an UCO is limited to minimize "turnovers" of stolen vehicles to secondary purchasers.

(5) Stops are placed with the Departments of Motor Vehicles and the National Crime Information Center to locate and identify secondary purchasers.

(6) Stolen vehicles are recovered with a court order or warrant to the extent possible.

Finally, any third party damaged or injured by an UCO may file an administrative claim under the Federal Tort Claims Act. The Director of the FBI has the authority to settle such claims up to $5,000. Any claim exceeding $5,000 is referred to the Department of Justice. If a claim is denied, the third party is not prevented from filing a subsequent civil suit for damages. Any person damaged or injured by an UCO is advised of the provisions of and available remedies under the Federal Tort Claims Act. We know of no innocent third parties who have been injured or damaged by an FBI UCO who remain unaware of the FBI's participation.

To date, ten law suits have resulted from RECOUPE. Three have been dismissed and seven are currently pending.

Government Fraud

QUESTION:

How many Government fraud cases involve projects or contracts in excess of $1 million? How many under $1 million? Is enough being done to identify major fraud in Government programs?

ANSWER:

In addressing governmental fraud matters, the FBI assigns its priorities based upon the actual or potential loss and not the size of a particular contract. For example, as of September 30, 1984, the FBI was conducting investigations in 2,005 governmental fraud cases in which the losses exceeded $25,000 and only 699 cases involving losses under $25,000. Although a particular case may be initiated based upon a reported loss of one amount, subsequent investigation frequently determines that a higher amount is more accurate. Resources are being utilized to address major governmental fraud matters in a manner consistent with effectiveness and efficiency. Additional resources were committed to these matters in FY 1984, and further increases are anticipated in FY 1985.

White-Collar Crime

QUESTION:

White-collar crime is a major problem and one of the FBI's top priorities. With significant increases in credit card fraud and computer crimes, how does the FBI justify maintaining current resource levels?

ANSWER:

The current level of resources devoted to white-collar crime are the result of a temporary diversion of resources previously committed to the investigation of white-collar crime. This temporary diversion is the result of demands in other priority areas such as narcotics investigations.

The FBI and the U.S. Department of Justice still consider white-collar crime to be a top priority.

Effect of Hiring Reduction

QUESTION:

You have been training significant numbers of new agents for the past two years. How will a reduction in hiring affect the need for additional facilities to house trainees?

ANSWER:

A reduction in hiring will not offset the need for the construction of a third dormitory at the FBI Academy. This new facility is deemed vital to the continuance of the Academy's ongoing programs/commitments. At present, with two existing dormitories, the FBI Academy has an optimum annual capacity of approximately 150,000 student training days. The Academy operated at 104 percent of capacity in FY 1984, with training days being equally allocated between FBI employees and general law enforcement training.

During 1984, excluding New Agents' Training, 60 percent of the requests for FBI training could not be conducted due to lack of dormitory space at the FBI Academy. It is estimated that in FY 1985, 55 percent of the demand will not be satisfied. In order to accommodate part of the demand for in-service training during the past two years, 1,854 students were lodged in local hotels and motels.

In response to internal training and developmental needs, the Training Division has established strict criteria for the scheduling of non-FBI schools. Training sessions are presently limited to management and executive development programs and those scientific and technical schools which are not duplicative of local or state initiatives. The

FBI Academy is meeting less than 33 percent of the demand for the National Academy program and approximately 13 percent of the demand for specialized and technical training for local law enforcement. Almost without exception, the curriculum presented at the FBI Academy represents subject matter that requires unique resources and personnel which are not available elsewhere. Likewise, the use of motels and other training facilities is not considered a viable long-range training mode. The learning environment available at the FBI Academy, as well as the security and unique resources it provides, makes it the ideal location for carrying out the FBI's mandate for continued training of its own personnel as well as its commitment to the general law enforcement community.

The proposed third dormitory can be justified fully on the basis of increased FBI training needs in the critical areas of foreign counterintelligence, computer-related training, white-collar crime, organized crime, drug matters, terrorism, supervisory, and undercover matters.

In 1981, the Forensic Science Research and Training Center became a permanent facility at the FBI Academy with no concurrent increase in dormitory space. The FSRTC is unique in its effort to support the Federal, state, and local law enforcement community and to further expand the capabilities of the forensic scientists. Full use of this facility has caused a reduction in other programs previously conducted at the Academy.

In addition to housing 250 students, the proposed dormitory will include facilities to meet the specific needs of the FBI's Intelligence Division. This dormitory will also accommodate conferences, seminars, retreats, and other related activities which the FBI Academy is not presently equipped to handle.

The possibility of relocating all DEA training from the Federal Law Enforcement Training Center (FLETC), Glynco, Georgia, to the FBI Academy further aggravates the dormitory shortage already being experienced. DEA's projected annual training need of 16,000 student days represents appoximately 10 percent of the Academy's lodging capacity. If DEA training is relocated to the FBI Academy without additional dormitory space, specific cuts of priority DEA and/or FBI training would have to be made or accommodated through additional off-site lodging.

Automated Systems

QUESTION:

FOIMS "baseline functional support" was to be provided to all 59 field offices by the end of 1985. Did this occur? If not, how many will be added in 1985, at what cost? If so, what is the next step for FOIMS automation; at what cost?

ANSWER:

Baseline FOIMS capabilities, which are case management, automated indices, personnel management, and time capture were scheduled to be provided to all 59 field offices by the end of 1985. However, due to legal delays encountered with the Burroughs terminal, FOIMS baseline capabilities is now scheduled for 28 field offices in 1985 with the remaining 31 field offices scheduled to come on-line by September, 1986.

QUESTION:

To what extent have the FBI and DEA been able to reduce duplicative automated information systems? How much money has this saved? What are the plans for future mergers of automated systems?

ANSWER:

The FBI and DEA have established a Technology Action Committee of the FBI/DEA Link-up Committee with a stated purpose "to provide a forum to identify and facilitate cost-effective joint activities involving automation and engineering technology to support common mission areas as well as specific operational requirements."

The Cost Analysis Group of the Institute for Defense Analysis has been contracted by the FBI to perform a cost/benefits analysis associated with having a single secure telecommunications network and single computer facilities to support both the FBI and DEA. The FBI has established a Field Office Information System (FOIMS) testbed in the Boston DEA office which is scheduled to be operational in June 1985. The FBI's Secure Automated Message Network has been installed at the El Paso Intelligence Center (EPIC) providing EPIC with access to the FBI's secure teletype network.

For the future, the FBI and DEA are exploring an on-line real-time turnkey system with embedded artificial intelligence to support EPIC operations; exchanging common functional data dictionaries which would serve to locate and define data which resides in either the FBI or DEA environment; discussing the sharing of information systems rapid prototyping tools; and jointly evaluating Office by Example.

At this point no money has been saved.

QUESTION:

How soon will AIDS III be implemented? How much will this reduce the need for staff in the Identification Division? Will normal attrition take care of this reduction?

ANSWER:

The implementation of AIDS-III, which is expected in late calendar year 1987, will not result in any immediate reductions from present staffing levels. While some present work functions will be eliminated, AIDS-III will create new personnel requirements. Additional personnel, most on a short-term basis, will be needed in 1987 prior to implementation in order to allow for the transition from the current system to AIDS-III and to automate or microfilm the remaining manual files. With these additional personnel, the current staff can learn the new work-processing requirements of AID-III, and testing can be conducted without creating work backlogs and response output delays. If the additional personnel are available in 1987, then personnel reductions can begin in 1988. However, if the staffing level remains constant through 1987, the work backlog would not allow for any reductions.

Normal attrition should take care of any reductions.

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LEGAL SERVICES CORPORATION

STATEMENT OF THOMAS OPSUT, INTERIM PRESIDENT

ACCOMPANIED BY:
DENNIS DAUGHERTY, ASSISTANT TO THE PRESIDENT
DAVID GESSNER, BUDGET OFFICER
CHARLES WHITE, COMPTROLLER
DICK BAGENSTOS, ACTING GENERAL COUNSEL
PETE BROCCOLETTI, ACTING DIRECTOR OF FIELD SERVICES

PREPARED STATEMENT

Senator RUDMAN. We will now hear from representatives of the Legal Services Corporation. For fiscal year 1986, LSC is requesting $305 million. Appearing on behalf of the Corporation was supposed to be Mr. William Durant, Chairman of the Board of LSC and Mr. Thomas Opsut, Acting President.

I think what we are doing go to do is go ahead with your brief opening. I understand you have it summarized.

Mr. OPSUT. I have been informed that we can waive the opening statement. I have submitted a statement for the record.

Senator RUDMAN. That is fine. We will do that and also include Mr. Durant's statement in the record. We will go for awhile here, but we may ask you to come back to have additional questions answered. I have a number for Mr. Durant, which I would like to be able to ask him. We will see whether he gets here or not. I am sure my colleagues have some, also.

[The statements follow:]

PREPARED STATEMENT OF WILLIAM CLARK DURANT, III
CHAIRMAN, BOARD OF DIRECTORS
LEGAL SERVICES CORPORATION

Mr. Chairman and members of this Subcommittee, I appreciate the opportunity today to present to you, on behalf of the Board of Directors of the Legal Services Corporation, the Corporation's Fiscal Year 1986 appropriations request. We are seeking an appropriation of $305 million, which is identical to our funding for this current fiscal year.

The Board arrived at this figure after extended debate and after serious consideration of other alternatives. Our deliberations concluded with a seven to four vote that $305 million is reasonably sufficient to fulfill the Corporation's responsibilities in the upcoming fiscal year.

That vote was preceded by the Board's review, under the leadership of Pepe Mendez, Chairman of the Appropriations and Audit Committee, of considerable material and testimony submitted at public hearings. Various grantees made recommendations on how to best allocate this $305 million request. The Board decided to reduce some allocations in order to increase by 4.5% funding of our basic field programs.

We would all agree that legal services is too important to be just another federal program. It is an essential and integral part of our system of justice. Almost everyone needs legal representation at one time or another, and we have an obligation to make sure that even the poorest of the poor have places to turn to with their legal problems. There is much we can accomplish through constructive efforts.

Over the past several months Senator Rudman has corresponded and spoken with me about how difficult confronting the budget crisis has become. In that regard he asked the Corporation to pursue additional funding sources, independent of Congressional appropriations. If I understood his thinking such an approach would help to provide renewable, long term funding; would help to depoliticize the Corporation; and would help most of all to increase and expand legal service to clients. I am in full agreement with him on this and as I noted in my testimony before the House Appropriations Subcommittee last month, I plan to devote some energy and time to explore every possible source of support for legal assistance to the indigent.

One example along this line is IOLTA's, Interest on Lawyer Trust Accounts. The Corporation recently gave additional funding to the IOLTA National Clearinghouse. As you know this relatively new source of funds has great potential. As of December 31, 1984, $22 million has been collected by 15 operational programs over the past three years. California alone just released $6.9 million in IOLTA funds for legal services to low or no income groups. Thirty-five states have approved IOLTA. One can see that the funds generated by IOLTA programs will be substantial.

Last month I had the opportunity to address the ABA's Pro Bono Conference in Charlotte, North Carolina. My respect for the Bar's commitment to its pro bono responsibility was increased by the experience.

LSC and bar groups have already initiated a major effort to develop pro bono panels and other forms of private bar involvement in the delivery of legal services for the poor. In New York City, for example, the City Bar Association recently announced a program which could double the amount of time that private law offices donate to public interest work. Under this plan, the number of law offices participating employ a combined total of more than 5 thousand lawyers who will provide 30 hours a year per lawyer to legal assistance, primarily in civil cases.

In 1983, Florida lawyers gave $57.5 million worth of legal services to those who could not afford to pay for them, according to a recent survey conducted by the Florida Bar. That survey showed that 70 percent of the bar provide pro bono services to individuals. In New Hampshire, a majority of attorneys participate in organized pro bono activities. What works in New York, Florida, New Hampshire or California can be tried elsewhere and with a good faith effort by all involved - LSC, the bar, legal aid societies, and private practitioners. I am convinced we can actually increase service to clients.

But it can't all be done by pro bono lawyers. As I have shared on several occasions, I had an experience a few months ago when a man called me for help about a Medicaid problem. My schedule and expertise did not allow me to handle his problem immediately. I called his local county legal aid office. The paralegal who answered the phone was polite and eager to help. She said she would set up an appointment for an initial interview and would review the case with the staff attorney who had experience and knowledge regarding the particular problem. Certainly that office was better equipped than mine to handle that problem. Without the staff attorney experience and the paralegal assistance that man's problem would not have been as efficiently handled. I am sure that many in the private bar appreciate that and the special commitment of those who have devoted a substantial, if not all, of their practice and skills to being a legal aid lawyer. I know I do. Yet even with their dedication and efforts there remain needs unmet, so we must expand our thinking.

The practice of law is rapidly changing in this country and we must adapt and change or grow obsolete and irrelevant. Our commitment cannot be to an organizational structure per se but must be to professional ends: Maximizing access to Justice. We must consider new ways to settle disputes and remove barriers that hinder the evolution of new methods. There are other sources to tap and other ways to assist our clients.

The Board recently heard a report from Dr. Jane Merritt, Special Advisor on Highland Lao Refugee Affairs at the State Department that demonstrates this point. She told us of the plight of 100,000 refugees and the sense of fear and isolation they felt when they first arrived in our country. They faced many obstacles, such as the language barrier, lack of modern work skills and profound cultural differences, yet Dr. Merritt knew that their goal was to be self reliant, contributory members of society, not victims of the welfare trap. Existing institutions were unable to meet their needs, so Dr. Merritt found people who could. By working with local attorneys, businessmen and community leaders, she found that the refugees received not only needed legal assistance, but also the collateral benefits that come from community based efforts: job referrals, sponsors, and the sense of self respect and pride that come from no longer being a ward of the state. Today these refugees are now settling in and reaching independence in their new home country.

While we pump the marketplace of ideas for ways to increase the delivery of legal services to our clientele, we at LSC must carry on with our responsibilities. We must endeavor to create a legal aid program that is based on principles of absolute fidelity to client interest untrammelled by political or ideological considerations. We must obey our Congressional mandate in all respects. We must endeavor to insure that the legal aid system provides quality legal aid to all poor persons who seek assistance. We must encourage the development of a legal aid system that meets the task at hand.

I am hopeful that this year, through increased open communication and a vibrant exchange of ideas, that all those who share the burden of providing legal services to eligible clients can reach a consensus that will lay to rest the discord that has unfortunately surrounded the Corporation over the last several years and has greatly hindered our clientele. A consensus that would set the atmosphere for passage and enactment of an authorization bill, for a confirmation of a Board of Directors, and for a lifting of restrictions on the Board that the Congress had found necessary to put in place.

My experience to date with my fellow Board members, with the LSC staff, and with our grant recipients has made me optimistic. There is a commitment and dedication to provide maximum, professional service to our clients. I am hopeful that a new spirit of cooperation between all parties will further assist us in pursuit of this common goal.

Lastly, I am encouraged by the generous support this Committee has always given to our efforts. On behalf of everyone involved in legal services, I want to express our deep appreciation for that support. On behalf of the Board, we look forward to working closely with this Committee as we carry out our mission.

PREPARED STATEMENT OF THOMAS J. OPSUT
INTERIM PRESIDENT
LEGAL SERVICES CORPORATION

Mr. Chairman. My name is Thomas J. Opsut. I am interim President of the Legal Services Corporation. I appreciate the opportunity to appear before your Committee and hope that our exchange here will be a help to you in your deliberations, and to the Corporation in terms of the difficult decisions you will have to make in the near future.

Although my title is Interim President, I take this job very seriously. Key among my priorities is to improve the relations between the Legal Services Corporation and the Congress.

LSC is a child of the Congress. We are funded by the Congress. And ultimately, we are responsible to the Congress. We shall meet that responsibility.

We also share a common goal, Mr. Chairman, that as long as the Congress wishes that the access to the civil justice system be leveraged primarily through the Legal Services Corporation -- we are pledged to provide the best possible counsel to the nation's poor.

My job is to assure that such service is rendered efficiently and responsibly -- that those who actually provide direct service do so within the statutes which govern their activities, and that they serve their clients well.

I will limit my comments to informing this Committee of the very serious difficulties LSC faces in managing its responsibilities in the near and distant future.

The decisions on funding levels, and the allocation of our scarce resources will be most properly addressed by distinguished members of our Board of Directors. I can tell you that their decisions as to budget recommendations before you today have been arrived at through a clear and open process.

In spite of the complexities of the debate over legal services, the functions of the Corporation should be essentially very simple.

As a private not-for-profit corporation established by the Congress, LSC is a funding conduit -- providing grants and contracts to other not-for-profit corporations for the local provision of direct legal assistance to poor clients. LSC also grants funds to yet other not-for-profit corporations intended to provide training, technical support and legal expertise to program lawyers in the field.

Congress provides the funding. LSC passes it on.

But... LSC is also charged with the fiduciary responsibility of assuring that all Federal funds appropriated to the Corporation are spent prudently and in strict compliance with both the letter and the spirit of the law. That is the Corporation's obligation -- to the Congress, to the American taxpayer and to the individual client in whose service LSC is supposed to exist.

Congress provides the funding. LSC passes it on. And the Legal Services Corporation insures the Congress that it is spent well.

There is a third function of LSC, which Congress has denied to the Corporation since December 1982 through the so-called "affirmative rider" -- the determination to how best to allocate funds provided. The doctrine of presumptive refunding -- which demands that all annualized grants be rubber-stamped -- has proven to be a disservice to our clients. It has resulted in an inequitable distribution of resources, and it has rendered moot the Corporation's ability to enforce the Legal Services Corporation Act of 1974 and enforce other appropriations riders.

Again, Mr. Chairman, LSC has an obligation to assure that funding you provide is spent according to law. That is how it is supposed to be. But there is a real world.

From my perspective, LSC is not carrying out that final fiduciary responsibility to you, or to our clients.

LSC cannot fully carry out that responsibility without your help.

Before accepting the interim Presidency of LSC, I served some 21-months as Director of LSC's Office of Compliance and Review -- an office akin to an inspector general but with oversight limited to grant recipients and contractors.

Virtually every day of that 21-months was marked by a sense of frustration.

The Corporation receives inquiries and complaints from the public, from aggrieved parties in legal actions brought by our grantees, from clients, from the bar, from the courts, and from Members of Congress.

All inquiries are taken very seriously. All complaints are investigated.

In many instances, a complaint may seem fully justified under the spirit of the law -- either the LSC Act or strictures applied to appropriations measures -- but the Corporation must find that no violation technically exists because the black letter of the law has not been violated. Our statute is singularly marked by loopholes. If that was the intent then so be it. If not, I call it to your attention.

My first days at the Legal Services Corporation were spent immersed in the law I was asked to enforce. I was appalled. The LSC Act contains a score of "Thou Shall Nots" but each has one or several escape clauses. Thou Shall Not Lobby elected officials: except where a client asks you to; or except where the official asks you to.

Thou Shall Not act as an organizer: except where you are representing a client.

It goes on and on.

As Senator Jeremiah Denton recently characterized our Act, "It is a law where loopholes have loopholes."

Perhaps worse than the loopholes is the fact that the LSC Act contains no penalty section, criminal or civil.

What are the consequences to violators of the LSC Act?

The only remedy available to the Corporation has to do with control of funds. However, the so-called "affirmative rider" prevents us from adding special grant conditions to prevent proven errant grantees from violating the law. That was an extremely useful compliance tool to past administrators of LSC.

Today, even where there is the clearest, most irrefutable evidence of violation of law on the part of LSC recipients, there exist no remedial steps for LSC either to seek redress or insure future compliance. So how are we to carry out our fiduciary responsibility?

Frankly, under the present situation, there is only one means of forcing compliance -- denial of refunding: a process which is time consuming, prohibitively expensive, and in most cases of little practical utility.

It is a terminal remedy, much like having one ultimate criminal penalty for all crimes. Life imprisonment at hard labor for murder. Life imprisonment for battery.

Yet, even where violations of law call for a denial of refunding process, the cost seems to outweigh the benefits to the public.

In the nine years of LSC's existence, there have been but 15 successful defundings, most of which were forced mergers.

We are currently involved in one. The grantee organization in question is the National Clients Council, which is a recipient of over $600,000 in LSC funding.

Based on the recommendation of a team of compliance auditors and investigators, the Clients Council was notified on

January 4, 1984 of the Legal Services Corporation's intention to deny refunding. A hearing examiner was appointed by the President of LSC and a hearing scheduled. The hearing itself lasted from March 5 through April 19, 1983 and created some 23 volumes of testimony.

Just counting legal fees for outside counsel the LSC bill to date totals over $300,000. During this entire process, the law requires that LSC continue to fund the questioned grantee -- in this case to the tune of over $43,000 per month in 1984, and that amount plus a ten percent increase (as required by the affirmative rider) for 1985.

Mind you, this process was formally begun on January 4, 1984 and has so far cost the taxpayers -- counting the month-to-month interim funding of the Clients Council -- well over $947,000. Counting staff time, and legal costs born by the Clients Council it will easily exceed $1-million to end funding of a $600,000 grant.

And it isn't over yet.

LSC needs help. It needs a streamlined defunding procedure, perhaps through binding arbitration. It needs some new tools to assure compliance with the law, short of terminal defunding.

Otherwise, LSC is nothing more than a check writing machine.

Specifically, LSC needs an authorization, in which the spirit of the law is reflected in the letter of the law, in which loopholes are closed and penalties are added.

Short of that, we need riders on appropriations measures with tighter language. And we need a Congressional requirement that our grantees spend down carryover funds before spending new funds. We have grantees who are still holding 1981 appropriated funds in interest bearing accounts, for the express purpose of continuing activities that Congress has since prohibited. In essence there are good dollars and bad dollars out there, depending upon your perspective.

If Congress says in an appropriations rider that LSC programs should not use tax dollars to represent illegal aliens, it seems clear to me that not just the letter, but the spirit of that dictum should be met.

I cannot express the frustration of investigating a complaint -- say concerning representation of illegal aliens by an LSC program -- finding that the complaint is totally invalid since the program used old dollars to carry out what otherwise would be a prohibited activity.

It is Alice in Wonderland.

The spirit of the law is what we are concerned with here.

Good faith is what we are talking about.

And good faith compliance with the law doesn't seem such a good idea to some of our grant recipients.

This last round of grant applications received by LSC from some of our recipients should more than demonstrate the problem.

Since the beginning of Legal Services, the Corporation has required certain conditions be met by grantees -- among them that a grant applicant will "comply with the Legal Services Corporation Act of 1974 as amended, 1977, and the rules and regulations, policies, guidelines, instructions and other directives issued by the Legal Services Corporation..."; or "... cooperation with all data collection and evaluation activities undertaken by the Corporation, and any authorized representative of the Legal Services Corporation or the Comptroller General of the United States..."

These are not only reasonable they are simply a contract restating that those who receive LSC money will abide by the law.

Yet a large number of our grantees are now adding escape clauses to their grant applications to the effect that "these assurances and agreements with respect to the Corporation requirements and actions apply only to the extent that the Corporation requirements and actions are lawful."

As part of the standard grant renewal process, the Corporation has required the submission of a "Compliance Confirmation Form" containing a compliance checklist covering every section of law governing the conduct of LSC recipients.

Some of our grantees are adding the following addendum to the form: "By indicating that we are in compliance with the above regulations, we are not agreeing to the descriptions in the instructions on what the regulations mean..."

And what authority can be cited to our programs as to "what the regulations mean?"

Is it the Congress? Is it the LSC Board of Directors? Is it the Corporation?

What meaning do rulings on regulations issued by the LSC General Counsel have?

What weight do legal opinions by the General Accounting Office have, or conclusions by an oversight Committee of the U.S. Senate have?

Apparently very little.

Before coming to the Legal Services Corporation, Mr. Chairman, I served as an attorney with the Indiana Supreme Court Disciplinary Commission from 1977 through March 1983.

Much of my legal career has been involved in issues of right and wrong. I don't view the real issues over the past, present or future of the Legal Services Corporation in any other light. The real debate should not be clouded. It is clearly a debate over right and wrong.

And finally, Mr. Chairman, we need your help. It is my wish to see this Corporation do what Congress has intended from the beginning -- to assure that those who cannot afford legal representation in civil matters indeed have access to quality legal representation.

Thank you.

BUDGET REQUEST

Senator RUDMAN. The first question I have is, last year, the LSC President, on behalf of the Board, testified before the Committee and requested an appropriation of $325 million for fiscal year 1986. According to Mr. Bogard, "Although the request is large, the Corporation believes it is justified because it is earmarked for the specialized direct delivery of services to undeserved clients."

This year, you are only requesting $305 million. I have two questions: One, how did you arrive at the number; and two, what programs dropped out of this year's request?

Mr. OPSUT. The Board gave careful consideration to the budget request. We gave consideration to the Congress' increased funding to LSC, greater than that accorded other programs in 1984. Our 1985 appropriation was 10.8 percent greater than 1984 and 26.5 percent over the level in 1983.

However, as you pointed out, Senator, in a letter to our Chairman, Clark Durant, the Federal Government is currently facing a budgetary crisis of unprecedented proportion. You urged LSC to develop outside funding sources, not only to insure continuity in times of budgetary crises, but also to help depoliticize the program.

LSC has been successful in developing some new outside sources, including IOLTA, where we continued a clearinghouse this year. The information received by the Board also made it clear there has been no realistic appraisal of actual need or the means of meeting that need.

Representatives of the Project Advisory Group spoke in terms of a $1.2 billion need, requesting a $377 million budget. Until some means of measuring the needs and the wants can be developed and new priorities based upon real needs implemented, increases in funding to Legal Services Corporation will not increase service to the most needed clients.

Senator RUDMAN. Let me go on from there. Last year, the then President said that LSC had started a study of the national and State support centers. Has the study been completed?

Mr. OPSUT. It has not.

Senator RUDMAN. It has not been completed?

Mr. OPSUT. No.

Senator RUDMAN. When will it be completed?

Mr. OPSUT. It is still in the first stage of completion. We are completing some monitoring reports of National and State support. I hope to complete that study shortly.

Senator RUDMAN. Does that mean in the next several months?

Mr. OPSUT. I would hope that it would be.

Senator RUDMAN. Would you keep the committee informed, please?

Mr. OPSUT. Certainly.

PRIVATE ATTORNEY INVOLVEMENT

Senator RUDMAN. According to your justification, every basic field recipient must allocate a minimum of 12.5 percent of its budget to stimulate the involvement of private attorneys. Could you describe the type of efforts that are being conducted by this initiative?

Mr. OPSUT. I can tell you one recent experience that I had through visiting the program in Tampa, FL. With the money that the program in Tampa allocated for the private bar initiative, at 12.5 percent, they hired a pro bono coordinator. Prior to that time, in the pro bono program, there were 50 lawyers on that particular panel.

Since the Pro Bono Director started there, and because of her efforts, there are now 350 lawyers on the pro bono panel. The unique aspect of this pro bono effort is that she went to the leaders of the largest corporations in Tampa, one of whom happened to be the former Attorney General of Florida, and asked whether the Corporations would supply attorneys to do intake. She was told by a number of sources down there it would never happen. It happened. Corporate lawyers are doing intake on Wednesday evenings and Saturday mornings, including the General Counsel of one corporation, the former State Attorney General of Florida. I am very encouraged by what I hear around the country in the private attorney effort.

Senator RUDMAN. The 12.5 percent is being used as seed money to set up and pay for the administrative costs of running these programs?

Mr. OPSUT. In that particular case, yes.

OFS REORGANIZATION

Senator RUDMAN. In your justification, you indicated you are eliminating 49 positions in your field services offices in nine cities. This move will leave no employees in eight offices, from which I have drawn the conclusion, even though you don't say so in your justification, that you are obviously planning to close some offices. You are leaving, as I understand it, seven employees in Denver. You are also adding 18 people in your field service headquarters staff.

What we want to know is, what are you up to in this area, and how can we be sure that there will be no deterioration of the services you provide your grantees going from small local field offices to a large operation in Washington. I have no preconceived opinion on this. I just want to know what is going on here.

Mr. OPSUT. Since the time that we submitted the budget proposal, we have reconsidered the question of reorganizing the Office of Field Services, of which the regional offices are a part. We have presently a staff recommendation which does not call for the closing of eight regional offices; that recommendation will be under consideration by the Audit and Appropriations Committee of the Board tomorrow. I would be glad to supply to the committee the staff's recommendation.

Senator RUDMAN. We would like to have that, and if there is some disagreement with that staff recommendation, we would like their position as well. We are looking to save money here, but we are not looking to have services deteriorated.

Mr. Opsut. One of the things the chairman of our Audit Committee asked for is public input on the question of reorganization to include members of the community, members of the public.

[Clerk's note: The Staff Proposal on OFS Reorganization has been submitted to the Committee. Due to the length of the material, it is available in the Committee files for viewing.]

PROGRAMS FOR THE ELDERLY

Senator Rudman. What is the present Status of the new program to include quality of legal services available to the elderly?

Mr. Opsut. We sent out notices that that money is available in three different categories.

Senator Rudman. When will the grants be made?

Mr. Opsut. The grants will be made before July 1, before the time set out in the statute for us to award them. We are on target to hit that date.

Senator Rudman. I have several more questions. I will yield to Senator Hollings. I have a number of questions for Mr. Durant but I am not sure where he is.

Mr. Opsut. He hoped he would be before you today, however he is appearing this morning before the Senate Labor and Human Resources Committee at the Board's confirmation hearing.

CLASS ACTIONS

Senator Rudman. We may have to reschedule the hearing, because I think it is very important to examine these issues. Are any changes being contemplated either among the Board of Directors or among staff in the existing statutorily established class action policy?

Mr. Opsut. No, sir.

Senator Rudman. No changes are being contemplated?

Mr. Opsut. None that I am aware of, not by staff or any members of the board that I have talked to.

TRAINING FUNDS

Senator Rudman. Why is a change being proposed in the language governing training funds? If I could bring my colleagues up to date on that, the existing law, which was enacted as part of the compromise two years ago, consists of a restriction on the use of training funds promoted by Senator Hatch coupled with qualifying language insisted on by Senator Eagleton. Your budget recommends deleting Eagleton language while retaining Hatch language. Why is that?

Mr. Opsut. I am not sure what that is all about.

Senator Rudman. I would like a detailed answer for the record on that.

Mr. Opsut. Yes, sir.

[The information follows:]

CLARIFICATION ON TRAINING FUND RESTRICTIONS

Submission for the record regarding LSC's FY 86 budget request for the deletion of the Eagleton language and retention of the Hatch language on the use of training funds.

The following is the Hatch-Eagleton language with the Eagleton language in brackets:

> Provided further, That none of the funds appropriated for the Legal Services Corporation may be used to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, including the dissemination of information about such policies or activities [except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients or to advise any eligible client as to the nature of the legislative process or inform any eligible client of his rights under statute, order, or regulation].

The Corporation does not believe it is appropriate, useful or necessary to add a broadly worded exemption to the prohibition on "training programs for the purpose of advocating particular public policies or encouraging political activities, boycotts picketing, strikes, . . ." Legitimate training does not require such an exception and improper activities engaged in under the guise of training should not have such an exception. The General Accounting Office and the Senate Committee on Labor and Human Resources have recently revealed abuses in this area. Continuation of these abuses could seriously undermine public support for this program. Enclosed are copies of some of the training. The Corporation does not believe it is appropriate to use public funds for the purpose of political advocacy. Nor is it necessary to the provision of legal assistance under the Act to engage in any of the prohibited activities, to train people in the techniques of such activities or to encourage surrogates to engage in such activities.

In compliance with the Committee's specific request for a detailed response, the following appendices are included as examples of fund expenditures which could be alleged to fall within the current exception:

Appendix I.	Grant materials for the Wadley-Bartow Citizens League, Inc. training project.
Appendix II.	An LSC funded manual entitled "A Strategic and Tactical Research, A Guide for Trainers and Training Responsible Persons. A Training Program for Legal Services Advocates."
Appendix III.	An LSC funded manual entitled "The Law and Direct Citizen Action, A Guide for Trainers and Training Responsible Persons. A Training Program for Legal Services Advocates."

(CLERK'S NOTE: Appendices I, II, and III are available in the Committee files.)

QUESTIONS FOR RECORD

Senator RUDMAN. I have no doubt that the answers we get for the record this year will be a lot more timely than the ones we got for the record last year. I am not accusing you of anything; you were not the acting president. I remind the committee that we had very serious questions, and I believe we got the answers the night before Floor action, if I am not mistaken, many months later. I would simply say to you that if you have problems with any of these questions, if you want them clarified, please get back to us, but they are very important to us.

Mr. OPSUT. I am aware of that.

Senator RUDMAN. I know you are.

CARRYOVER FUNDS

You have carryover funds of about $5.385 million. This doesn't take into account some $467,000 that has been earned on interest on the unspent fund. Could you resolve this discrepancy for us. What is going on with this money?

Mr. OPSUT. I will let my colleague answer.

Mr. GESSNER. The staff has prepared a recommendation to be taken up by the Board's Audit and Appropriations committee tomorrow, Mr. Chairman.

Senator RUDMAN. To do what with the money?

Mr. GESSNER. We have proposed allocating carryover money following that. In field programs, $950,000; into program development, $1.8 million; into supplemental service provision, that is not a grant but bookkeeping, $3,000; into training and technical assistance, $456,000; into other support, $407,000; and for management and administration, we would retain the $1.7 million that we requested in 1984. There is no recommendation to allocate the investment income. The staff believes that this roughly half a million dollars should be retained as emergency reserves.

Senator BUMPERS. Mr. Chairman, would you yield for just a second?

Senator RUDMAN. Yes.

Senator BUMPERS. This statement has no figures in it. I don't know what they are asking for; what they got this year; what their increase and decrease is. There is not a number in this testimony.

Senator RUDMAN. Are you talking about the statement you have?

Senator BUMPERS. Yes.

Senator RUDMAN. We have the justification which should have been furnished.

Senator BUMPERS. Maybe I was just not given a copy of it.

Senator RUDMAN. Let me ask a question, Mr. Opsut. Why not take a big chunk of that money and give it to those programs which directly benefit the poor? Why not get it right out in the field where we are having the biggest problems. What would be wrong with that kind of recommendation, since it is money that is left—carryover money?

Mr. OPSUT. We are recommending a portion of that money for that purpose.

Senator RUDMAN. But only $900,000 something odd. Did I misread you on that?

Mr. GESSNER. No, sir.

Senator RUDMAN. Out of $5 million.

Mr. GESSNER. Twenty percent of that money is proposed to be used in the Office of Field Services for a major effort to get up to date on the monitoring effort. This is something that has been falling behind over the last couple of years. Our Board has directed us to achieve an 18-month cycle for monitoring.

Senator RUDMAN. Would you just inform the committee as to when that decision was made and how that carry-over money is being allocated?

Mr. OPSUT. Certainly.

[The information follows:]

STAFF PROPOSAL ON USE OF FY 84 CARRYOVER FUNDS

LEGAL SERVICES CORPORATION

MEMORANDUM

TO: Thomas J. Opsut
Interim President

FROM: Joel Thimell, Acting Staff
Coordinator, Audit and Appropriations
Committee

DATE: May 6, 1985

SUBJECT: Status of 1984 Carryover Allocation

No decision has yet been made regarding the allocation of 1984 carryover funds. The Audit and Appropriations Committee received testimony on the attached staff recommendations at its April 25, 1985 meeting from David Gessner, LSC Budget Director; John Meyer, Associate Director, OFS; Keith Osterhage, Manager, Program Development Unit; and Terry Roche, Project Advisory Group.

Allocation of 1984 carryover funds will be placed on the agenda of the May 23, 1985 Audit and Appropriations Committee meeting.

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: April 15, 1985

TO: LSC Board of Directors

FROM: Joel Thimell, Acting Staff Coordinator
Audit and Appropriations Committee

SUBJECT: Allocation of 1984 Carryover

The enclosed staff recommendations for the allocation of 1984 carryover include a recommendation that the Board set aside approximately $700,000 of these funds for basic feild programs. Mr. Mendez has suggested that the Board might also consider allocating some of these funds to the supplemental field programs. As you know the supplemental field programs are predominantly former Delivery Systems study judicare and pro bono projects like the New Hampshire Pro Bono Referral System, which were annualized in 1981.

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: April 25, 1985

TO: Thomas J. Opsut, Interim President

FROM: David Gessner, Budget Director

SUBJECT: **Recommendation on Use of FY 1984 Carryover Funds**

Fiscal year 1984 carryover funds total $5,385,137. Of this amount, approximately $300,000 has been recorded as receivables, the collectibility of which is questionable. These receivables have to do with questioned costs relative to regulations that are not being enforced. The staff's recommendation for use of the carryover, however, includes allocation of the entire amount, including these receivables, under the assumption that the funds will be distributed upon their collection.

The staff is making a recommendation to withhold any allocation of investment income. This amount totals $466,635 at September 30, 1984. It is advisable for the Board to maintain a contingency in the event that there are emergency requirements for these funds at some future time.

Of the total carryover available for distribution, $1,584,377 is committed for various grants, contracts, and other obligations; $3,800,760 is available for the Board to distribute in accordance with the priorities of the Corporation. Please see attachment 1.

COMMITMENTS

In the Basic Field Programs line, the commitments of $171,993 represent obligations for the following items:

Tri-Parish Legal Services: $10,993 for payments due to the interim provider in the service area;

Emergency Fund: $50,000 for special requirements within the Basic Field Programs line that must be met on a timely basis (no such emergencies exist at this time);

Michigan Indian Legal Services: $10,000 for a contractual obligation made in 1984;

Selac close out: $10,000 to be set aside for existing cases not yet terminated by the interim provider;

LAS Inc. - Kentucky: $30,000 for completion of old cases in the area of alien rights;

Atlanta LAS: $61,000 for a refunding grant adjustment.

In the Native American Programs line, the commitments of $78,721 are for the following two items:

White Mountain Apache Reserve: $35,000 for one-time awards. It is likely that these awards will be made shortly;

Revolving Expansion Pool: $43,721 for a set-aside for eligible Native American programs.

In the Migrant Programs line, $180 is required to offset a deficit in 1984.

In Program Development, $431,658 is required for payments under the Private Law Firm Project, and $35,000 is required for payments on the NORC contract.

In Program Emergency Fund, $3,094 is required to offset a deficit in 1984.

In Technical Assistance, $305,142 is required for payment on the contract for the installation of financial management systems in certain field programs, and $15,000 is being set aside for CSR test sites.

In Regional Training Centers, $136,157 represents a payment that was not made in FY 1984 because of the differences in the grant period and the fiscal year; the State Support amount of $245,947 represents the same situation with regard to Western Center; the amount for National Clients Council represents a final FY 1984 payment of $87,100 and a reserve of $74,035 for the 1984 increase, pending judicial action.

Please see attachment 2 for a summary of the commitments.

UNCOMMITTED

The staff is recommending that uncommitted carryover funds be allocated to three areas: Program Development, Management and Administration, and Basic Field Programs.

Program Development: $1,265,200 is recommended for use in the expansion of the Private Law Firm Project, and $100,000 is for expansion of the scope of the Legal Needs Study. There is $400,000 allocated to this study out of the 1985 appropriation.

Management and Administration: $1,736,430 is the amount available at the end of FY 1984. The staff is recommending that the entire amount be retained for the following purposes:

1. $1,000,000 for a one-time project devoted to catching up on monitoring and auditing;

2. $300,000 for special studies and research;

3. $170,000 for a reserve in the General Counsel's Office for litigation-related expenses; and

4. $266,430 for the Office of Information Management to upgrade the main computer system and expand the use of computer technology throughout the Corporation.

Separate memoranda are being forwarded to you on each of the above items. The balance of carryover funds, $699,130, is recommended to be allocated to Basic Field Programs in order to increase the funding levels of the lowest-funded programs. Grants would be one-time in nature. Funds are limited to the extent that there are receivables on the books of the Corporation. Cash distributions cannot be made until such time as funds are collected. Those funds that are now available will be distributed.

REPROGRAMMING

Under the provisions of Section 509 of the Act appropriating funds for the Legal Services Corporation, the Appropriations Committees of both the House and Senate must be notified 15 days prior to any reprogramming in excess of $250,000 or 10% of a budget activity. The shift of $636,297 into Field Programs and the bookkeeping transfer of $6,188 into Other Support, accomodated by shifts of $14,343 out of Training and Technical Assistance and $628,297 out of Program Development will require such notification. Please see attachment 3.

(CLERK'S NOTE: Attachments 1, 2, and 3 further explaining the Staff proposal on the use of FY 1984 carryover funds are available in the subcommittee's files.)

ACTIVITIES OF MR. OPSUT

Senator RUDMAN. Just for my colleagues, Mr. Opsut, you are the Acting President. You have been in the Legal Services Corporation for how long?

Mr. OPSUT. Since April of 1983.

Senator RUDMAN. And before that?

Mr. OPSUT. With the Indiana Supreme Court Disciplinary Commission in Indianapolis.

Senator RUDMAN. Senator Hollings?

REGGIE PROGRAM

Senator HOLLINGS. Mr. Opsut, I understand that at a recent meeting it was decided to terminate the program to attract minority attorneys into the Legal Services program. You have got 100 already on now in their first year. Why not allow the 100 to continue in the second year? What are we going to do in regard to attracting minority services in legal services?

Mr. OPSUT. The funding for the Reggie program is a year ahead. Those already in the process will be able to complete their term in the Reggie program.

In terms of the decision on the Reggie program in the 1986 budget, the Reggie program was initiated in the sixties and carried into the seventies and eighties as a means of recruiting minority lawyers nationwide and to encourage law students to take up poverty law.

There has been a tremendous growth in quality minority students graduating from law schools. We think that recruiting is now being done by a number of different methods, including advertising in Clearinghouse Review and through a pilot law school project which has helped in the recruiting area.

So we think that in terms of recruiting, it can be done in a variety of other ways other than Reggie.

Let me add that the Reggie program will be studied to see whether or not it should be continued.

Senator HOLLINGS. That is the whole idea. It seems like you have studied it and decided; that is why I was asking. Isn't that the case? You just voted to adopt a revised budget, and one of the budgets was the termination of the funding of the Reggie program. That is exactly what you voted.

Mr. OPSUT. The current Reggies in the field will be carried through.

Senator HOLLINGS. But that is what you voted. You are telling me you are studying it, and you just voted after you studied it. I take it you will vote and then study.

[Laughter.]

Senator RUDMAN. That is what we do around here, Senator, sometimes.

[Laughter.]

Senator RUDMAN. You are absolutely right and right on target. I don't really understand the answer.

MINORITY ATTORNEYS IN LEGAL SERVICES

Senator HOLLINGS. How many minority attorneys do you have in Legal Services?

Mr. OPSUT. I don't have that figure. I have it for 1983 but it is still being compiled for this year.

Senator HOLLINGS. Please furnish that for the record. I really have my questions, too, for Mr. Durant.

[The information follows:]

MINORITY ATTORNEYS FUNDED BY LSC IN 1984

ETHNIC BACKGROUND OF LSC FUNDED ATTORNEYS—1984

Black	516
Hispanics	460
Native Americans	53
Asian	69
White	2,928
Total	4,026

Senator RUDMAN. We have a lot of questions. We are definitely going to recess this hearing.

Senator BUMPERS. Is Mr. Durant going to come before this committee?

Senator RUDMAN. Oh, absolutely, and I would say to the committee that Mr. Durant has been forthcoming with the committee. He has come to see me a number of times on some issues. I am sure he would be delighted to meet with others. I am encouraged by what Mr. Durant is trying to do. I have a number of questions for him, however, that I would like answered on the record. I think it is very important that the subcommittee meet again, maybe next week, at a time convenient to all so we can have Mr. Opsut and Mr. Durant back here.

However, we have time now if you would like to ask some questions.

Senator BUMPERS. I will wait until then. I haven't had a chance to look through this justification.

Senator RUDMAN. Let's contact the subcommittee and tell them we will reschedule this hearing for next week.

ILLEGAL ALIENS

Senator BUMPERS. One question, though, Mr. Opsut. You do represent illegal aliens, do you not?

Mr. OPSUT. Pardon me?

Senator BUMPERS. There is no prohibition against representation of illegal aliens is there?

Mr. OPSUT. There is, yes.

Senator BUMPERS. Are you prohibited from representing them?

Mr. OPSUT. Yes.

Senator BUMPERS. Was that a Helms amendment a couple of years ago, or does anybody know when that prohibition was put on?

Mr. DAUGHERTY. It was an amendment put on by Mr. Chiles, Senator Bumpers, put on in 1983. It limits representation of many categories of legal as well as illegal aliens. Actually, it has only four specified categories of legal aliens eligible for our services.

Senator BUMPERS. Who else?

Mr. DAUGHERTY. The categories that are eligible include permanent residents; refugees; persons seeking political asylum; an alien who is either married to a U.S. citizen or has a parent or unmarried child under age 21; or a citizen who has filed an application for adjustment of status to permanent resident; or an alien lawfully present in the United States as a result of the Attorney General's withholding deportation.

CLASS ACTIONS

Senator BUMPERS. How about class actions? Are there any prohibitions on class actions?

Senator RUDMAN. We have the same provisions that we have had for the last 2 years, which are in the bill.

Senator BUMPERS. What is that?

Senator RUDMAN. It is a fairly complicated formula.

Mr. DAUGHERTY. There is a requirement for a negotiation prior to filing a suit; the requirement of a determination by the project director pursuant to policies adopted by the board that the action is worthwhile. There is a set of checks within the program before an action is filed. It is not a prohibition to filing a suit in either case. It is procedural.

Senator RUDMAN. That only does relate, I would add, to class action suits against units of government. It does not include other class action suits. The purpose of it, as agreed to by members of the subcommittee, was to try to encourage more responsible class action suits. There is really not a restriction, in a general case, in my opinion.

GRANTEE'S FUND BALANCES

Senator BUMPERS. One other thing and one other observation I would make, Mr. Opsut, and I'm not sure where you come down on this, but apparently, you want to be able to take the money away or reduce funding for an ensuing year where there is obviously an excess of money with the grantee. Is that correct?

Mr. OPSUT. That is correct.

Senator BUMPERS. I will tell you the danger in that. These grantees are just like government agencies; most of the time they will try to spend the money so they can get more next year. At least when I was Governor, I remember saving millions of dollars by just imposing a spending freeze the last 90 days. It caught them by surprise, because usually they go out and buy new automobiles and typewriters in the last 90 days so they can come back and ask for more and increase the appropriation. I have no quarrel with your desire to do something about that. I would support it.

You state in here that some of these grantees are keeping money on deposit just so they can have the interest on that income coming into their services; is that correct?

Mr. OPSUT. That is correct.

Senator BUMPERS. What do you want to do about that?

Mr. OPSUT. We tried to do something about it in terms of recovering fund balances. We were stopped from doing it.

Senator BUMPERS. That is one of the things that troubles me just a little bit. If you recover a fund balance, that is sort of an incentive for them to spend it. If they know you are going to take it away from them, it looks to me almost like a catch-22. If they know you are going to take it away from them, they will spend it. If you can't take it away from them, they will invest it to gain revenue. I don't know how you deal with it.

Senator RUDMAN. Senator Bumpers, would you yield?

Senator BUMPERS. Yes.

Senator RUDMAN. One of the questions I was going to ask you on that very same issue is that you say there are grantees holding appropriated funds in interest-bearing accounts for the express purpose of continuing activities that Congress has prohibited. What kind of activities?

Mr. OPSUT. We have had situations where money has been used for representation of alien cases where that money is held back and then used for purposes of representing people who have since been prohibited.

Senator RUDMAN. Would you be prepared at the hearing that we will have in the next week or two to answer that question in some specificity? I would like to know.

Senator BUMPERS. That is an excellent question, Warren.

Senator RUDMAN. I would like to know more about it, and would like some examples.

Senator BUMPERS. Fine.

[The information follows:]

USE OF INTEREST FUNDS FOR PROHIBITED ACTIVITIES

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: May 6, 1985

TO: Thomas J. Opsut, Interim President

FROM: Victor M. Fortuno, Acting Director VMF
Office of Compliance and Review

SUBJECT: Congressional Requests

1) In response to Senator Rudman's question, "[some LSC recipients] are holding appropriated funds in interest-bearing accounts for the express purpose of continuing activities that Congress has prohibited. What kind of activities?" The following is submitted for your consideration.

--Texas Rural Legal Aid

-Complaints by Thomas Baca, Rebecca Spencer Olind, Senator Lloyd Bentsen, and U.S. Attorney James Rolfe.

Briefly stated, the investigations conducted into these complaints disclosed that TRLA was holding FY'82 funds for use in representing aliens who would have been ineligible for representation with FY'83 or FY'84 funds.

--Evergreen Legal Services (Seattle, Washington)

-Complaint by Assistant U.S. Attorney William H. Beatty.

This case involved ELS' representation of an alien in a civil suit filed in Federal court in 1983 against several public officials.

Our investigation revealed that no FY'83 or FY'84 funds were used to undertake this representation. Consequently, it was concluded that the representation in question did not constitute a violation of the prohibition against representation of aliens.

-Complaint of Harvey Faurholt, Esq.

Again, ELS represented aliens with pre-FY'83 appropriations and, hence, did not violate the prohibition against representation of aliens.

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: May 2, 1985

TO: Tom Opsut, Interim President

FROM: Dan Nusbaum, Director, Audit Division

SUBJECT: Senator Rudman's Question on Use of Carryover Fund Balances

I have been asked to provide you with information regarding recipients utilizing carryover fund balances for activities which are prohibited by a particular year's Appropriation language. It is my understanding that Senator Rudman was asking for specific examples regarding this matter.

The Audit Division does not maintain any records that are addressed to this specific issue. A recipient's annual audit report would not necessarily segregate LSC fund balances or carryover according to a particular fiscal year's appropriation, nor would it be required to do so under generally accepted accounting principles. I am personally aware of several recipients that have segregated carryover funds from current year funds in order to continue certain activities. One such case involved Texas Rural Legal Aid which used carryover funds to continue representation of aliens which was prohibited with funds awarded LSC under Public Law 97-377, and in following years' Appropriation language.

I am also aware of other recipients that would segregate current LSC funds from prior years' carryover funds and then maintain that the carryover funds were not governed by any new restrictions contained in the current year Appropriation language. These recipients were the National Economic Development and Law Center and the National Housing Law Project. Had I had time to do further research prior to writing this memorandum, I am sure I could cite other examples where recipients had segregated carryover funds from current year funds in order to conduct certain activities.

The Audit Division has attempted to deal with this issue by adding the following section to the revised Audit Guide:

> Carryover LSC funds are assumed to be expended prior to the expenditure of current year grant funds. There are two exceptions to this policy. They are when:
>
> (a) LSC has approved a fund balance plan allowing for expenditures over a specified timeframe or for specific items; and/or,
>
> (b) The recipient establishes a distinct fund to account separately for the use of carryover funds.

This wording would allow recipients to use carryover funds for either specifically approved plans or for representing individuals such as aliens to close out cases which are prohibited under current year funding.

I would prefer to see a grant condition or assurance that would state that all funds (either direct grants or derivative income such as interest or attorney fees) must be expended in accordance with rules, regulations, or guidelines currently in effect or in accordance with any revisions or additions that are made in the future. This would certainly make auditing recipients easier if only one set of regulations or standards applied to all funds at a given point in time.

In reading the transcript of the Senate hearing, it appears that there is some concern over LSC recipients earning interest income on either carryover or current year funds. The actual earning of interest income is to be expected since LSC funds recipients a month in advance and also allows carryover of 10% of the prior year funding for operational purposes. The problem arises when programs do not properly budget expenses and end the fiscal year with a significant fund balance, or try to segregate derivative income from the LSC fund balance. It has always been the Audit Division's position that derivative income is subject to the same regulations and conditions which are in effect in the current grant year.

There have been situations where recipients have subgranted large amounts of LSC funds to other organizations either to avoid recapture under the Corporation's fund balance instruction or to segregate the funds from current year LSC funding. Two instances that readily come to mind are Texas Rural Legal Aid, which transferred $800,000 to the Texas Rural Legal Foundation; and Puerto Rico Legal Services, Inc., which transferred $725,000 to the Puerto Rico Legal Foundation. Although these transfers took place in 1982, both subgrantees have a substantial fund balance remaining as of December 31, 1984. In the case of TRLF, the fund balance is $575,000; for PRLF the amount is $526,000. The Corporation has issued Regulation 1627, "Subgrants, Fees and Dues", to address these types of transfers.

Please let me know if you would like additional information or input on this matter. I believe that there are improvements which could be made in either the regulations or authorizing statutes that would clarify the Corporation's position and eliminate certain abuses which have occurred.

DAN:mej

(CLERK'S NOTE: Appendix I providing example of the use of Interest Funds for Prohibited Activities is available in the committee files.)

SUBCOMMITTEE RECESS

Senator RUDMAN. We will recess this hearing to a date to be announced. We are sorry about the inconvenience, but we will have to have you back.

(Whereupon, at 11:08 a.m., Wednesday, April 24, the subcommittee was recessed, to reconvene at the call of the Chair.)

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1986

WEDNESDAY, MAY 1, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:34 a.m., in room S–146, the Capitol, Hon. Mark O. Hatfield, Jr. (chairman) presiding.

Present: Senators Hatfield, Rudman, Specter and Bumpers.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

STATEMENT OF SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE

ACCOMPANIED BY BYRON RAYMOND WHITE, ASSOCIATE JUSTICE

INTRODUCTION OF WITNESSES

Chairman HATFIELD. The subcommittee will come to order. This morning, we will hear testimony regarding the budget of the U.S. Supreme Court. Appearing on behalf of the request is the Honorable Sandra Day O'Connor, accompanied by Justice White.

Justice O'Connor, you may summarize or highlight your statement as you wish. Your entire statement will be made a part of the record.

Justice O'CONNOR. Mr. Chairman, Justice White and I appreciate very much the opportunity to be here today and to present the Court's budget. Justice Powell sends his regrets that he is not with us this time.

Chairman HATFIELD. How is he doing?

Justice O'CONNOR. I think he is doing well but felt that it was advisable for us to continue the presentation this year without him.

We have with us today from the court staff Dr. Mark Cannon. Here is Mark, whom you probably know.

Chairman HATFIELD. Indeed.

Justice O'CONNOR. He is the Administrative Assistant to the Chief justice; and Mr. Wong, the Marshal of the Court; and Ms. Saxon, who is our Acting Personnel Director; and Tony Donnelly here behind me, who is our Budget Officer.

BUDGET REQUEST

We have a written statement, and I am not going to read it, because it will be made part of the record. The total budget estimate for fiscal year 1986 is $17,602,000, which is an increase of $916,000 over the budget authority for 1985.

The budget request, as usual, is divided between the operations of the Court and the maintenance of the building and grounds. The sum of $15,176,000 is for the salaries and expenses of the Court, and the balance at $2,426,000 is for the care of the building and grounds.

Part of the Building and Grounds budget includes a proposed 1986 addition of $320,000 to provide additional security for the Court, and George White, the Capitol Architect, will address the Building and Grounds aspect.

SALARIES AND EXPENSES

The Salaries and Expenses portion of the Court's budget represents an increase of $752,000 over the budget authority for the fiscal year 1985, as adjusted to reflect a proposed supplemental appropriation for salary costs. That increase is primarily mandatory increases and inflation, but it does include five program changes, which I think should be mentioned.

COMPUTER PROGRAMMER/OPERATOR POSITION

An additional $32,000 has been included as a request to fund the cost of a new computer Programmer/Operator position in the Data Systems Office.

Now, that individual would handle the word processing and computer functions that are not related to the opinion process of the Court.

Good morning.

Senator RUDMAN. Good morning, Madam Justice. How are you?

Justice O'CONNOR. The Court uses, of course, computers and word processors in its opinion-writing process, and for other administrative operations of the court, it has a small computer. This position is designed to facilitate the use of that.

FEDERAL TELECOMMUNICATIONS SYSTEMS CHARGES

An additional $30,000 is requested for the increase in the Federal Telecommunications Systems charges. That item has been of concern to the Court, because the Court, as with other federal offices, I understand, went on a new billing system under the Federal Telecommunications System, and it has resulted in significant increases in the charges that are made.

An increase of $25,000 is requested to begin a phased replacement of the old Diablo printers that are used by all of our chambers in the opinion-writing process. Unfortunately, they need replacement, and the proposal is to phase that in.

The sum of $100,000 is requested for acquisition of an automated, integrated library system to coordinate the functions of the Court's library.

The last item is $11,000, which is requested to fund two automated work stations for the Research Librarians.

The details of those are in the printed budget request. I think that is all I need to touch on as far as specifics.

[The statement of Associate Justice O'Connor follows:]

PREPARED STATEMENT OF HON SANDRA DAY O'CONNOR
ASSOCIATE JUSTICE
SUPREME COURT OF THE UNITED STATES

Mr. Chairman and Members of the Committee, I appreciate this opportunity to appear before your Committee to address the budget requirements of the Supreme Court for fiscal year 1986.

I have with me today Dr. Cannon, Administrative Assistant to the Chief Justice; Mr. Wong, Marshal of the Court; Ms. Saxon, Acting Personnel Officer; and Mr. Donnelly, Budget Officer.

Our total budget estimate for fiscal year 1986 is $17,602,000. This is an increase of $916,000 over the budget authority for 1985. The overall budget request for 1986 is 5.5 percent higher than the total budget authority for 1985.

As usual, the budget request is divided between operations of the Court and the maintenance of the building and grounds. We are requesting a total of $15,176,000 for Salaries and Expenses of the Court, and $2,426,000 for Care of the Building and Grounds. The amount for Care of the Building and Grounds includes a proposed 1986 amendment which would add $320,000 to provide additional security for the Supreme Court. My statement will be limited to the salaries and expenses of the Court. Mr. George White, Architect of the Capitol, will present his segment of the total budget.

The estimate of $15,176,000 for Salaries and Expenses of the Court itself for the next fiscal year is an increase of $752,000 over the budget authority for fiscal year 1985, as adjusted to reflect a proposed supplemental appropriation for salary costs. If we exclude the various mandatory increases and inflation, the actual increase in the budget authority for Court operations in 1986 is $198,000 more than in 1985.

This increase of $198,000 includes five program changes. An additional $32,000 is requested to fund the cost of a new Computer Programmer/Operator position in the Data Systems Office. The proposed programmer/operator will support the Court's automation of various administrative functions including budget, accounting, personnel and word processing not related to the opinion process. An additional $30,000 is requested to fund a projected increase in Federal Telecommunications Systems charges. An increase of $25,000 is requested to begin a phased replacement of the aging Diablo printers now being used on the Atex system, which is the computer system that supports the Court's opinion process. The sum of $100,000 is requested for the acquisition of an automated, integrated library system which will control and coordinate separate functions of the Court's library. Finally, $11,000 is requested to fund the purchase of two automated work stations for the Research Librarians.

The details and justifications for these items appear on pages 1.8 through 1.10 of our budget submission.

The budget request for the care of the building and grounds reflects an increase of $164,000 including the proposed amendment. Thus, viewing the Court's budget as a whole, a net increase of $916,000 is projected.

This concludes a brief summary of our request. The Court's detailed budget submission has been filed with the Committee. The officers of the Court who are present, and I will be happy to answer any questions that you may have.

(CLERK'S NOTE: A separate hearing dealing with the Care of Buildings and Grounds of the Supreme Court was not scheduled. The Architect of the Capitol was requested to submit testimony for the record relating to this portion of the Supreme Court budget. The prepared statement of Hon. George M. White, therefore, follows:)

PREPARED STATEMENT OF GEORGE M. WHITE
ARCHITECT OF THE CAPITOL

Mr. Chairman and Members of the Committee:

I am pleased to provide the Committee this statement which is a brief summary of the fiscal year 1986 appropriation request for the care and maintenance of the Supreme Court Building and Grounds.

As you know, the Architect of the Capitol, by authority of the Act of May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court Building and Grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in another appropriation.

In our prepared justifications for 1986, we have requested a total appropriation of $2,106,000. This represents a net decrease of $156,000 under the total of $2,262,000 for 1985, which includes a pending pay supplemental request in the amount of $20,000. The net decrease of $156,000 is represented by decreases in non-recurring projects totalling $357,000, offset by increases to the base and non-recurring projects totalling $201,000.

Increases requested are: $31,000 for annualization of Civilian Pay Act and Wage-rate pay increases effected in January 1985, related benefits, premium pay and within-grade salary advancements authorized by law; $5,000 to offset increased costs due to inflation for goods and services procured for annual recurring maintenance items, that is, supplies and materials, air conditioning maintenance, and for the exterior pointing and caulking program; and $40,000 for the maintenance of the security system.

Nonrecurring items requested total $125,000 and very briefly include: improvements to the Supreme Court Building clock system ($50,000), and replacement of concrete sidewalks adjacent to Second Street, N.E. and East Capitol, N.E. ($75,000).

I have recently transmitted a fiscal year 1986 budget amendment in the amount of $320,000. These funds are for the installation of security improvements at the Supreme Court Building, and the Chief Justice has requested that we proceed with these items at this time.

That concludes my summary and I shall be pleased to provide any further information that the Committee deems appropriate.

SUPREME COURT SECURITY

Chairman HATFIELD. Thank you.

Justice White, do you have any additional comments you wish to make before we begin some questions?

Justice WHITE. Not with respect to what Justice O'Connor has stated.

Chairman HATFIELD. All right.

I believe both of you Justices are members of the Security Committee or the committee that has been reviewing this?

Justice O'CONNOR. I am not. Justice White is.

Chairman HATFIELD. I'm sorry.

Justice O'CONNOR. That is why I thought it might be helpful if Justice White were available today.

Chairman HATFIELD. Several weeks ago, as I recall, and I think you referred to this, the Committee did approve reprogramming to provide for some security improvements for the Court. Now we have this budget request from the Capitol Architect for $320,000 to further enhance the security.

For this Committee, could you give us a bit of an overview of the security problems at the Court; how these moneys, this $320,000, particularly, would be used to solve those problems?

Justice WHITE. Mr. Chairman, I just have a few remarks along that line. We think that various happenings in recent years around the country and the world, at the very least, counsel some vigilance. The Court building is not at all the same place it was in the 1960s, when I arrived there.

Many areas of the building are no longer open to the public; the police presence has been greatly increased and is plainly evident everywhere. Entry through the courtroom during arguments is closely monitored, and various other steps have been taken. The need for further measures, however, were recognized by the Court and by Congress when a supplemental appropriation was forthcoming during the last fiscal year, which was for the purpose of increasing the security of the building and of protecting us and the public from injury. Only a small part of the money has been spent, but we are working on it and have fairly solid plans to undertake several measures that will protect the building and ourselves in important ways.

I should say that the building is not the easiest building in this city to protect, and there was a rather detailed study that took several months only relatively increasing the force before us.

In any event, the steps we have in mind are perhaps all that can be expected during the next fiscal year. Hopefully, they will not require further funding, even though they will require that we bring our police force to its full authorized strength.

The details of these plans are perhaps better left to the architect, since they are, for the most part, in his domain.

TRANSPORTING ASSOCIATE JUSTICES

As far the safety of the Justices when they are away from the building, that is very much an individual matter. Although I would think that we would be somewhat more careful about where we go and what we do, of course, we must travel from home to office and back again, and we must go around the city to some extent. More important, it so happens from time to time that the marshal feels that a Justice should be accompanied when he is away from his home and away from the building.

In this regard, Congress would be of great help. As you know, Section 1344, Title 31 of the U.S. Code requires specific statutory authority for the use of government vehicles to transport personnel between home and office. It is for this reason that our appropriation every year contains express authority for a car and driver for the Chief Justice. There is no similar authority for Associate Justices.

But there is Section 13(N)(a) of Title 40, which authorizes the Marshal of the Court to protect the Justices anywhere in the country. This is perhaps ample authority for the Marshal to authorize our police officers to drive Justices back and forth to work. We are advised, however, by the Comptroller General that if this is to be done on any kind of a regular basis, specific authority should be obtained. Hence, if I might make a suggestion, and we will be making this suggestion to the House subcommittee, this committee might consider amending the provision in our appropriation which authorizes the, and I quote, "purchase, hire, driving, maintenance and operation of an automobile for the Chief Justice" by adding the words, and I quote, "and the use of a sum not to exceed $10,000 for the purpose of transporting Associate Justices, including transporting them to and from their residences, as may be authorized by the Court."

I hasten to point out that because we do not all come and go at the same time and because there is absolutely no thought that every, or even most of us would require escorted transportation from home to work, we do not anticipate that the suggested provision would require any funding beyond our overall budget request for the next fiscal year.

We think we can make do with the vehicles we have and with the officers presently on board or who will join the force within the next few months. Hence, we would appreciate your attention to this matter.

I understand that Senator Proxmire has written the House Subcommittee recommending that this suggestion be rejected. But if those who are professionals in security advise a Justice that he needs protection, it seems to us if that the Justice accepts this advice he should not feel that he is breaking the law.

Also, contrary to the Senator's apparent assumptions, we think that all that needs to be done can be done without adding personnel or requesting additional funds in connection with this matter.

Thank you, sir.

Chairman HATFIELD. Thank you, Justice White. Unless you feel that the Senator from Wisconsin is focusing specifically upon the Court in terms of his views concerning cars and drivers, let me assure you that view is held as a universal application by the Senator to all cars and drivers, whether it be of the Court or the military.

Justice WHITE. I understand. I understand that is true.

Chairman HATFIELD. So it is just a general perspective he has.

Then Justice White, to summarize my understanding of your statement, should we adopt this particular language, it would be your view that we would have no need for additional vehicles or personnel; it can be handled within the present inventory of the Court's vehicles and within the personnel now in the employ of the Court?

Justice WHITE. As far as we can tell, that is absolutely true for this next fiscal year.

Chairman HATFIELD. All right.

Senator Rudman, would you care to pose some questions at this point?

Senator RUDMAN. I really only have one.

Chairman HATFIELD. Excuse me just one moment to take a telephone call.

INTERCIRCUIT TRIBUNAL

Senator RUDMAN. It does not bear on the appropriation directly. I am curious about the general feeling of the Justices—I think we know how the Chief Justice feels—about S. 704, which is Senator Thurmond's bill to create the experimental 5-year panel to exercise jurisdiction over certain cases. The Chief Justice has endorsed it. How do you all feel about the bill?

Justice O'CONNOR. Senator Rudman, the Court is not speaking with one voice on that question, and so in responding, I will respond for myself.

Senator RUDMAN. That is how I meant to frame the question.

Justice O'CONNOR. As far as I am concerned, I favor the adoption of authority for establishment on a temporary basis of an intercircuit tribunal and providing the mechanism whereby the Court could refer some cases to such a tribunal. I think that it would be useful to the Nation as a whole to see if that doesn't provide a useful additional capacity for the courts to resolve existing conflicts in Federal law.

I think it would afford an opportunity to demonstrate whether that approach is a valid one. I happen to think it is.

Senator RUDMAN. Would you like to respond?

Justice WHITE. Senator, I appreciate the chance to respond to that, because I have been in favor of such an expanded appellate capacity for many years. I think some years ago, the Senate had a study about the Federal appellate structure, and there was introduced a bill for a permanent so-called court of appeals.

The problem has been, as I see it, that the Court has a limited capacity to give plenary consideration to cases, and we are right up against that limit now, about 150 cases a term. Over the years, as the number of cases filed has gone up, and yet we can grant no more than 150 cases, the percentage of all the cases and requests that have been filed that we can take has gone down. When I came here to the Court, we were at somewhere between 12 and 15 percent of all the cases that were filed. We now review less than 5 percent.

My own opinion has been, and I have stated this publicly several times, that we are now denying certiorari in a good many cases that, personally, I think would have been granted in the 1950's or the 1960's. Many of those are cases in which there is conflict on the same question of Federal law between the courts of appeals or between the courts of appeals and State supreme courts.

I have never seen very much merit in having the Federal law enforced one way in one part of the country and another way in another part. The trouble with this is that, if we granted all the cases that I think ought to be granted, we would fall steadily behind, because we already hear 150 cases a year. But other than that, a lot of the cases that involve conflicts involve issues that I don't think really deserve the attention of a full, nine-justice Court. That jurisdiction of that Court, I think, should be reserved for cases that are really important to the Federal law, and a lot of these conflicts do not present those kinds of issues. They just present the question of which way should the conflict be resolved.

I think that if the intercircuit panel were available, a good many cases that we are now denying we would refer to that court. Also, Senator, a good many people around the country think 150 cases are just too many for the Court to try and decide. For 20 years prior to 1970, we were deciding only 100 cases, but as soon as we adopted a half-hour on the side instead of an hour on the side for arguments, we expanded our argument capacity, and immediately, in about 4 or 5 years, we were up from 100 to 150.

Senator RUDMAN. I am sure you will improve the quality of the argument, from my observation.

Justice WHITE. We found that lawyers can say in a half hour what they were saying in an hour.

[Laughter.]

Chairman HATFIELD. What about 15 minutes?

[Laughter.]

Justice WHITE. We are working on that. We are working on that, Senator.

Senator RUDMAN. Soon we will have a 5-minute rule.

TRIBUNAL'S EFFECT ON COURT CASELOAD

Justice WHITE. I think some of the interest on the intercircuit panel is that perhaps a lot of cases we are now deciding to take we would no longer take but would refer to the intercircuit panel. Perhaps we could get down to 120 or 110 and perhaps improve the quality of our work.

Senator RUDMAN. There were 4,500 cases docketed last year according to the statistics furnished.

Justice WHITE. Those are just on the docket.

Senator RUDMAN. Just on the docket, I understand that, and not the number of certiorari granted; 150 cases, 151 decided. The proposal is for nine judges, four alternates, to be designated by the Court, and my understanding of the proposal is that the Court would still retain the jurisdiction in any of these cases to overrule the inter-circuit decision of that court. I suppose the end result would be that you would get additional screening, maybe more careful screening, of some of the cases. Do you think that would be the result?

Justice WHITE. Some people think: What good would it do if the Court could be asked to review the inter-circuit panel's decision? But even if certiorari was applied for from every single decision of the inter-circuit panel, which certainly wouldn't be the case, 100 more petitions on top of 4,000 or 4,500 would be a drop in the bucket. So that aspect doesn't worry us at all. It would save us work, we think.

Senator RUDMAN. I appreciate your comments. I generally support this proposal, and I was curious what your thoughts were. My view is that the argument that has been made by many informed people is that we don't want to dilute the importance of the U.S. Supreme Court. Certainly, we all share that. On the other hand, I suppose if you look in the future, this figure that I have of 5,100 cases may very well, in this society we live in, become 30,000 or 35,000 cases by the year 2020. I would support this idea, and I think the subcommittee would support the idea. Thank you very much.

Chairman HATFIELD. As a co-sponsor of that proposal, I can assure you, if we get it passed, we would certainly follow up with the funding, as the Senator from New Hampshire indicates.

INTERCIRCUIT CONFLICTS

I want to ask a question that would appear it might apply criticism to certain courts, and I wouldn't want to do that in public. Let me just sort of observe something in a wandering way. It would seem to me as a non-lawyer that when I look at the number of reversals of the Ninth Circuit as they have been set forth by the court's opinions over the last few years, I would think that possibly, an inter-circuit group that would be attempting to resolve some of these conflicts between the circuits would give another dimension of legal interpretation to the individual circuits. I would think that being reversed by the Supreme Court would be a little bit different than being reversed by a group of peers within the same hierarchial level. That is just a layman's observation.

SENTENCING COMMISSION

On another matter, a couple of years ago, I accompanied the Chief Justice to Sweden and Denmark on a review of prisons and criminal sentencing. As you know, there has been pressure to build more prisons to take care of the growing number of court cases that involve sentencing.

It has been my view, based a lot on that particular experience, that if we get into a massive construction program that there ought to be some sentencing reform within the court system. Last year, as you know, we set up a Sentencing Commission within the Comprehensive Crime Control Act.

I wonder if either or both of you would care to comment on whether the Sentencing Commission could lead to more flexibility or less flexibility for judges in sentencing and what the objectives of such a commission could be or should be and what they should be trying to achieve in the sense of their mission.

Justice O'Connor. Mr. Chairman, I don't know how the Federal commission is going to operate, and I would hesitate to try to predict what effect it will have on Federal sentencing policies. The vast bulk of all criminal cases in this country are handled in State courts, not Federal. The various States have been as concerned with sentencing policies as the Congress has here for Federal crimes.

When I was a State court judge, I sat for a good while as a judge dealing with criminal felonies only and having to handle sentencing, and I went through the process of our State in developing sentencing guidelines. The Arizona legislature eliminated most of the discretion which is available to judges in sentencing. I saw that at work.

The result, the immediate result was the need for more prison space and a reduction in some of the alternatives for sentencing. I suppose the jury, so to speak, is still out on whether that has been a good thing. The concerns that were in the minds of the legislators who adopted that change in Arizona, and I think in most States, was the sense that it isn't fair to have an individual convicted of a particular offense given probation, whereas another individual convicted of the same offense goes to prison for 20 years; and the sense that there should be some similarity in treatment of people who are convicted of the same offense.

Whether, in fact, that concept is going to work, I am not sure.

SENTENCE REFORM

Chairman HATFIELD. Justice O'Connor, as you know, we are in a situation which blurs the distinction between the Federal and the State courts because what is happening, as you know, increasingly, is courts' actions are to prohibit the incarceration under certain existing prison conditions; early releases and so forth in order to reduce those crowded conditions.

That, in turn, creates the pressure on the Federal Treasury to be participants in the alternative of those early releases and court actions by building prisons. I have heard and you have heard the estimates of billions of dollars that would be required to update, modernize, standardize our prisons.

We also get it from within the Federal system, even. There is talk about the needs of Lorton and other Federal prison facilities. They are looking throughout the Northwest now for the possibility of a new site for a Federal prison.

We in the Congress really are sort of wondering where can we look for the kind of guidance and help we had hoped for, maybe under this Commission, on the matter of focusing upon sentence reform; whether it would be transferable from Federal prisons to State prisons, from Federal courts to State courts. For a layman, again, it would seem to me, there ought to be some transferability of their findings and their recommendations.

We need help in dealing with this. As I say, I have been resisting some of the pressure about more appropriations for construction until we get some sentencing reform. I don't need to cite it to you. You are more familiar than I.

You cited one example, but there are multiple examples, as you know, not only of inconsistencies or lack of standards, but you have the tough judge and the easy judge and they all impact upon this question: How do we keep the public protected, not only the Justices to and from their work, but the general public from the attacker, from the offenders?

We get these cycles within the leadership of the Attorney Generals, law and order and get tough and then the others who have different philosophies. Where do we, the Congress, look for help?

Justice O'CONNOR. I am not sure I can answer that, but it seems to me the most effective mechanism for controlling behavior in the long run, if you have someone who is not incarcerated, is peer pressure; being in a situation where that person's associates put pressure on them to conform their behavior to society's expectations. And how we achieve that is the challenge for all of us; how do we make the environment one that encourages people to conform their behavior to legal requirements?

I think that is the challenge. Obviously, part of it is in education and part of it is in having employment and to the extent that people are on probation and parole, it certainly requires adequate and constant supervision. I don't think it works to just release someone back into the circumstances that produced the bad behavior in the first place.

Chairman HATFIELD. Until we have a societal reform and cultural change of values and so forth, I guess all I can say is that I am hoping that the Sentencing Commission can come forth with something. In the meantime, I will continue to resist building more buildings. I guess we will have to wait and hope and pray that we can come up with a solution.

ALTERNATE SENTENCING

I have been through these periods. I have been very interested in prison reform even before my public service of 35 years began. I have gone through those various sundry periods where indeterminant sentencing was going to help all our problems, and we have had various theories coming along of alternate sentencing in terms of community service.

Of course, none of those things have really ever lived up to all they were touted to be or to achieve. Nothing is going to be perfect this side of eternity, but I still think that we ought to be doing something in terms of a little more focus like the Scandanavian countries, and yet we found the Scandanavian countries have not reached that point, either.

The Chief Justice was very quick to point out that recidivism and so forth was not that much different between the Federal court system in America and some of their prisons.

At least there is so much more flexibility I sense in the Scandanavian countries for trial and pilot programs, experimentation. We tend to have a little more—at least, again, the perception is—a little more rigidity and less willingness to experiment.

I guess Senator, we are not going to solve that problem today.

Senator RUDMAN. I would only comment, Mr. Chairman.

Chairman HATFIELD. As a former Attorney General of the State, would you care to comment? Senator Rudman.

Senator RUDMAN. Only that the great dilemma that we all face is that the American people, justifiably, have about had it with the behavior of many people in society and demand a rather rigid approach to the handling of criminals on the one hand, but resist mightily the funding to either reduce the problem or build containment centers called prisons for these people. That is the conflict we find ourselves in on this committee. It is the conflict we found ourselves in within the State of New Hampshire and, I am sure, every other State.

I couldn't agree more with you, Madam Justice, that that is ultimately the way to solve the problem. But you know, in the meantime, frankly, we must address the problem the best we can. It is a bewildering situation.

ALTERNATIVE DISPUTE RESOLUTION

Chairman HATFIELD. And there is another factor, too, that I may observe as a non-lawyer. I think within the legal educational system, we are going to have to start developing some kind of this approach that you mentioned, Madam Justice, in terms of changing attitudes in education within the society. To oversimplify, it seems to me we better start looking at teaching reconciliation, the art of reconciling, more than just the objective of remuneration, and in my view, that is about what the legal profession has fallen to, is one of the profession's objectives is looking at remuneration more often than they are looking at the opportunities of reconciliation. That is oversimplification, but it makes a point.

I am proud to say that my alma mater, who happens to have a law school I struggled through 1 year of and decided it was not for me, has established a center now for reconciliation, arbitration and mediation as a special curriculum that the law students are going to be funneled through. It may not be the ultimate answer, but at least it is evidence that within the profession, there is a growing concern about how do we educate these young people into the practice of law?

Justice O'Connor. Happily, a few of the law schools are going into teaching techniques for alternative dispute resolution and for negotiation.

Chairman Hatfield. Those are the phrases I think that I should have used to describe what I am talking about.

Justice O'Connor. That is it.

Chairman Hatfield. Thank you very much for your time. I appreciate it.

Excuse me.

PREPARED STATEMENT

Senator Rudman. Mr. Chairman, there is a statement from Senator Bumpers along these lines.

Chairman Hatfield. It will be submitted for the record.

[The statement follows:]

PREPARED STATEMENT OF HON. DALE BUMPERS
U.S. SENATOR FROM ARKANSAS

Mr. Chairman, it is a special honor to be able to participate in these hearings this morning on the budget request for the Judicial branch of our government. I almost began by saying, "May it please the Court." It is a humbling experience for a country lawyer from Charleston, Arkansas, to have the opportunity to question Justices of the Supreme Court about how much money they really need to run the nation's judicial system for the next year.

Let me say at the outset that I have supported adequate funding for the Courts, for the Marshals, for the Department of Justice, and for building more prisons, and I will continue to do so.

There are, however, a couple of matters of judicial policy that I would like to take this opportunity to comment on. I would prefer that the Chief Justice be here, because it is primarily with some of his views that I take issue, and I hope that Justices White and O'Conner will feel free to express their own views.

First, while I respect Chief Justice Burger's views on matters of judicial administration, I have yet to be convinced that Congress should abolish diversity jurisdiction. I should say first that I do not think Congress is likely to take this action, but certainly the urging of the Chief Justice on such questions has considerable weight here.

Article III, section 2, of the Constitution, as members of the Court and the subcommittee are undoubtedly aware, sets forth suits "between Citizens of different States" as one of the nine fonts of federal jurisdiction. I want to raise two very practical points. In my state, the resources of the state courts are very limited. As a former governor, I can attest to the difficulty of getting the legislature to appropriate money for prisons, and the same goes for the courts. The state courts of Arkansas are simply not prepared to absorb the enormous increase in workload which would result from the Federal courts' sudden divestiture of diversity jurisdiction. Equally important, the Federal Courts are heavily dependent on the support and good will of members of the organized bar. But, for most of these lawyers, Federal court means a forum for diversity cases. If the general practitioner in Charleston, who is unlikely to have an admiralty case or a federal question case very often, cannot expect to get his diversity case heard in the Federal forum, what incentive does he have to be supportive of the Federal judiciary?

Another issue I wish to discuss is the National Court of Appeals. I know that not all members of the Supreme Court share the Chief Justice's view that Congress should lighten the workload of the Supreme Court by creating a new Super Court of Appeals to resolve conflict between the Circuits. I am concerned about the Court's workload, and I think the Court should do something about it. The Supreme Court has almost complete control over the cases which it hears. It disturbs me considerably that members of the Court and its staff have to work so hard. But I am not yet convinced that the answer lies in the creation of a new layer of judicial decision making.

Finally, I continue to be concerned about the matter of the Senior Federal Judges inclusion in the Social Security system. The present provisions of law, which I supported, exempting them from Social Security expires fairly soon and I think it is very important that Congress deal with this problem permanently so that the country does not lose the invaluable services now provided by the Senior Judges. These judges, who are in semi-retirement, would be unfairly penalized by having to pay Social Security taxes on the retirement benefits they receive while performing selfless service to the Nation.

Finally, on a slightly parochial note, I remain concerned about the evident lack of progress in construction of an important addition to the Federal Courthouse in Little Rock. Although Congress appropriated funds for this facility long ago, ground has not yet been broken. Judge William R. Overton is about to begin his sixth year on the bench and is still without a courtroom. I gather that this is now in the hands of the General Services Administration. But if there is anything the Administrative Office of the U.S. Courts can do to speed things along, both Judge Overton and I would be most appreciative.

SUBMITTED QUESTIONS

Chairman HATFIELD. We will submit other questions for response to the record.

Justice O'CONNOR. The Court stands ready to respond to the questions that the committee has. We are very grateful for the opportunity to be with you. Thank you, Mr. Chairman.

Chairman HATFIELD. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

QUESTION: I understand Justice White has recommended that Associate Justices of the Court be given the option of being driven to and from work due to possible security risks. Is he proposing a full-time driver for each Associate Justice or that Supreme Court Police drive them to and from work if there is potential trouble? Does the latter require appropriations bill language? If so, could you please provide suggested language for the record.

RESPONSE: Justice White is not proposing a full-time driver for each Associate Justice. He is proposing that, in the event of a security risk, an Associate Justice have the option of being driven to and from work by Supreme Court Police without being in violation of the statute which prohibits transporting government personnel from home to work without specific legislative authority. That authority could be granted by amending the language of the Supreme Court appropriations bill which authorizes "The purchase, driving, maintenance and operation of an automobile for the Chief Justice." Justice White proposes to amend that language by adding the words "and the use of sum not to exceed $10,000 for the purpose of transporting Associate Justices, including transporting them to and from their residences as may be authorized by the Court."

QUESTION: Currently, the U.S. Marshals Service has agents specifically trained to deal with terrorist and other security problems affecting Federal Judges. Should we rely on their expertise when security situations arise rather than establish a new group within the Supreme Court Police Force?

RESPONSE: The U.S. Marshals Service is called upon to provide protection services to the Justices when they travel out of town. Recently, the Supreme Court Police through recruitment and training have developed, from within the authorized staff, a group of officers qualified to provide escort and protection services to the Justices when they travel within the Washington metropolitan area. We feel that this approach is more manageable in that it allows timely response to local, and sometimes short notice, security situations. Also, it is a better use of the manpower of the Supreme Court Police and the U.S. Marshals Service.

QUESTION: If the Committee recommends additional drivers for the Associate Justices, will the Court also need additional automobiles?

RESPONSE: If the Committee recommends additional drivers in the context of providing a dedicated automobile and driver for each Associate Justice, then the Court would require more automobiles. However, since we use the motor pool approach, to address the Court's transportation needs we do not require additional automobiles or drivers at this time.

QUESTION: You're requesting one additional permanent position in 1986, a computer programmer/operator. What will be the duties of this employee?

RESPONSE: The requested Computer Programmer/Operator will support the automation of certain administrative functions including budget, accounting, personnel, and word processing not related to the opinion process. These functions are being developed to utilize the Hewlett-Packard mini-computer, and have thus far required the services of a consultant to complete project tasks. With most of the programming yet to be completed, it will be more cost effective to hire a Computer Programmer/Operator than to continue contracting for consultant support. The proposed position will also permit cross-training and professional back-up which will provide flexible support to the growing number of users of the new system.

QUESTION: The Court is requesting $100,000 for an integrated library system. How will this work?

RESPONSE: The automated, integrated library system will coordinate and control the major processing activities of the library. Those activities are: purchasing books; cataloging them so they might later be retrieved by author, title or subject, and classifying them for subject arrangement on the shelves; controlling journal, advance sheet, and pocket part subscriptions (serials); providing a method of patron access (usually a card catalog); and circulating books to patrons. Rather than purchase a separate automated system for each of these functions, the Court proposes to take advantage of the evolving technology by purchasing a system which combines automated control of the several activities of the library into one integrated, automated library system. An integrated library system permits the patron or staff member to access or work with any data in the system. At a single terminal a book or journal may be ordered, cataloged, retrieved or circulated. Whenever one of these transactions is performed, it is immediately apparent to everyone else using the system.

An integrated library system will provide online manipulation and more flexible analysis of the material in the library's collection, as well as improved service to patrons through better control of processing functions.

QUESTIONS SUBMITTED BY SENATOR SPECTER

(Response by Justice O'Connor)

In responding to these questions, I speak only for myself. My colleagues no doubt have different views concerning some or all of the questions.

Q. Do you support the proposal for creation of an "intercircuit Tribunal" composed of judges from each federal circuit court of appeals?

A. I support the proposal for authorizing formation of an intercircuit tribunal, drawn from among the federal appellate court judges, to which the Supreme Court could refer some cases each Term for decision.

Q. Would you support creation of an "intercircuit tribunal" if its member judges were chosen by each of the circuits rather than by the Supreme Court?

A. It seems to me preferable for the Supreme Court or Congress itself to determine the method of selection of members of any intercircuit tribunal.

Q. Should the Rules of Civil Procedure be amended to provide for prejudgment interest, calculated from the date the complaint was filed, to be awarded in antitrust cases?

A. I have no opinion at present on the question of whether the Rules of Civil Procedure should be amended to provide for prejudgment interest in antitrust cases. It is a question which I have not studied.

Q. Could the Court's overcrowded docket, which is offered as justification for creation of an "intercircuit tribunal," be eased simply by the Court exercising greater selectivity in accepting cases?

A. Certainly the Supreme Court has power to grant either more or fewer petitions for certiorari and thereby affect its own workload. However, it is my own view that the Supreme Court should agree to accept for plenary review at least all those cases presenting significant issues of federal law which are likely to arise with some frequency and on which other federal or state courts have reached conflicting holdings. It is unlikely that the Supreme Court can grant many more cases per Term than it already regularly accepts. I believe one of the primary functions of the Supreme Court is to oversee the development of a fairly uniform and consistent body of federal law. In my view, the creation of an intercircuit tribunal would be useful in expanding our capacity to fulfill this function more adequately than is possible at present.

Q. Would it be appropriate for the nomination of an article III judge (or the confirmation of such a judge) to be made dependent on the individual's personal opinion on a single issue or set of issues, or on the individual's membership in or contribution to particular groups or associations?

A. As a practical matter, the power of nomination of federal judges by the President and of confirmation by the United States Senate is a power constrained only by the personal conscience of the participants and general public opinion. It is my hope that the power will always be used wisely and objectively to select highly qualified people to serve the nation well as members of the judiciary.

Q. Do you support the elimination of "diversity jurisdiction" in federal courts?

A. Yes, I think the time has come to eliminate the "diversity" jurisdiction of the federal courts.

(Response by Justice White)

In responding to the six questions addressed by Senator Specter to me, I speak only for myself.

1. Q: Do you support the proposal for creation of an "intercircuit Tribunal" composed of judges from each federal circuit court of Appeals?

A. I do support the proposal to create an Intercircuit Tribunal.

2. Q. Would you support creation of an "intercircuit Tribunal" if its member judges were chosen by each of the circuits rather than by the Supreme Court.

A. I would prefer that the selection be made by the Supreme Court.

3. Q. Should the Rules of Civil Procedure be amended to provide for prejudgment interest, calculated from the date the complaint was filed, to be awarded in antitrust cases?

A. I have arrived at no independent judgment on this question.

4. Q. Could the Court's overcrowded docket, which is offered as justification for creation of an "intercircuit Tribunal", be eased simply by the Court exercising greater selectivity in accepting cases?

A. Decidedly not. The Supreme Court can hear and decide only about 150 cases each term. In my judgment it is now denying certiorari in many other cases that should be reviewed. Hence, the chief justification for the Intercircuit Tribunal is to provide a court to which the Supreme Court could refer cases that it does not have the capacity itself to hear and decide. For the Court to turn down still more cases than it now does would obviously not cure, but exacerbate, the problem. The attached addendum more fully states my views.

5. Q. Would it be appropriate for the nomination of an article III judge (or the confirmation of such a judge) to be made dependent on the individual's personal opinion on a single issue or set of issues, or on the individual's membership in or contribution to particular groups or associations?

A. I hesitate to advise how the political branches should exercise their constitutional powers to nominate and confirm federal judges.

6. Q. Do you support the elimination of "diversity jurisdiction" in federal courts?

A. I would favor the elimination of diversity jurisdiction in the federal courts.

(ADDENDUM TO JUSTICE WHITE'S ANSWER TO QUESTION NO. 4)

During the 1984 Term, I publicly dissented 54 times from the Court's refusal to review a case raising an issue that I believe it should address: 27 times I wrote and published a dissent from denial, twice I joined similar writings by other Justices, and 25 times I noted on the public record, generally without explanation, that I would grant certiorari or note probable jurisdiction. In 18 of these dissents I was joined by one other Justice and in 13 by two. As of June 24, there were 69 additional cases in which another Justice, by himself or with others, publicly noted his dissent from the Court's refusal to review. There were also many instances in which one or more Justices voted to grant but did not note this fact on the public record. I shall, however, confine the following discussion to the cases in which I, with or without others, publicly dissented from the refusal to grant plenary consideration.

The bulk of these 54 cases involve conflicts or confusion among the lower courts. By my count, the Court has turned aside 33 such cases. Twenty-nine of these--twenty-three statutory and six constitutional cases--involved flat conflicts between the lower courts on a specific statutory or constitutional issue. In four other cases there was obvious confusion among the lower courts over the construction of a federal statute or the Federal Constitution. The rest of the 54 cases involved decisions on statutory (9) or constitutional (11), or admiralty (1) issues of sufficient importance to merit review, and included some decisions that to my mind were of doubtful validity.

At least six members of the Court concluded that none of these 54 cases deserved plenary consideration. But denying review of decisions that conflict with other decisions of Courts of Appeals or State Supreme Courts results in the federal law being enforced differently in different parts of the country. What is a crime, an unfair labor practice or an unreasonable search and seizure in one place is not a crime, unfair practice or illegal search in another jurisdiction. Or citizens in one circuit do not pay the same taxes that those in other circuits must pay. It may be that occasionally it would be of use to leave a conflict unresolved in order to await the views of other courts; but for the most part, the conflicts that we turn down are not in that category, and they invite prompt resolution in this Court, which now is the only forum that can provide nationwide unformity. And this is to say nothing of those cases involving no conflict but obviously important statutory or constitutional issues that warrant authoritative review.

The Court can hear approximately 150 cases each term. (It is more accurate to say that we are able to hear 150 arguments each term. Since a single argument often covers more than one case, we actually hear more than 150 cases each term. For convenience, I shall refer to an "argument" as a "case".) During the past term just over, we granted plenary review in 168 cases, more than could be heard in a term; and if the Court had granted all of the cases in which I dissented from denial, obviously the excess over our capacity to hear cases would have been much larger. If this recurs in future terms, there will be longer and longer delays in having issues resolved in this Court. But in my view, this would be preferable to concealing the problem by denying more and more cases and leaving the federal law in more and more confusion. The federal law deserves better treatment.

Because I have been convinced for several years that this Court can itself no longer perform the appellate function that is required to service the federal law, I have favored creating additional appellate capacity in the federal system. It may be that in the long run more fundamental changes in the appellate structure will be required if the federal law continues to expand; but it is my view at the present time that another court or an intercircuit panel should be created and be available to decide cases that we would refer to it--cases that we think should be decided but are beyond our capacity to decide. These would be primarily those cases involving issues of statutory construction, including those in which conflicts have developed among the federal courts.

My position would be different if run-of-the-mill statutory cases obviously demanded the attention of a Court of nine justices who always sit en banc and almost always decide cases only after briefing and oral argument and normally with full opinion. But they do not. Most such cases do not involve questions of surpassing importance or present any special need for the attention of nine Justices to ensure the "correct" result. Rather, the need is to arrive at a satisfactory, uniform construction of a particular statute. For example, it is obviously better that prosecutors know whether the federal arson statute reaches the burning of a 2-unit apartment building used as a rental property, or whether the federal statute criminalizing assaults against custodians of mail matter is limited to crimes involving the Postal Service. It is also important to arrive at some uniform definition of a "security" under the federal securities laws--is, for example, a discretionary commodities futures trading contract a security? Questions like these obviously should be settled, but they are of less than monumental importance, plainly less important than others, and I doubt that their significance or difficulty requires the attention of 9 Justices.

Statutory issues, including those involving conflicts among lower courts, form a large part of our work. Well over half the 150 or so cases argued this Term--84 cases--involved the interpretation of federal statutes. Forty-eight of these, a third of this Term's argument docket, involved questions on which the lower courts were divided. Half of these 48 cases were decided over the dissent of at most a single Justice, and well over a third were unanimous. In my view, there should be some mechanism for deciding many of these cases without engaging the elaborate procedures under which this Court operates. Yet as of now, we are the only Court available to perform this appellate function. Furthermore, despite the time we devote to cases involving conflicts among the lower courts, we deny review of a substantial portion of such cases, including conflicts on nonstatutory issues that otherwise might be resolved.

I do not suggest that we should reserve our jurisdiction for constitutional issues or that we would most of the time refer to another tribunal, if it were available, those cases involving conflicts over the meaning of a federal statute. But with that option available, it would be possible to review the many cases that now merit, but do not receive, further appellate consideration. At the same time, we could reserve our jurisdiction for those statutory and constitutional issues that are most important for the coherent development of the federal law.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Question: What impact does the recent reprogramming have on the $40,000 requested for maintenance of security systems in fiscal year 1986?

Response: The requested amount of $40,000 for maintenance of security systems was based on the anticipated installation of approximately $400,000 of equipment during fiscal year 1985. Because of a recent re-evaluation of security needs at the Supreme Court, a portion of the installations originally intended have been deferred and other security work has been requested in a reprogramming. Additional funds in the amount of $320,000 have been requested in a fiscal year 1986 budget amendment for the security program.

As a result of the shifting of priorities, the installation program has been delayed to the extent that the $40,000 requested for maintenance will not be required during fiscal year 1986. Maintenance funds will be required in fiscal year 1987 and an appropriate request will be made at that time.

Personal Security of Justices

Question: A few months ago, we had the incident of a bullet piercing a window at Justice Blackmun's apartment. If I recall correctly, the police concluded that it was a random firing but it made me mindful of the Justice's security.

When we marked up the fiscal 1979 appropriations, I made provision for a leased car for each Justice. Unfortunately, our House counterparts were adamantly opposed and we didn't pursue it further.

Has anybody thought further about providing cars to the Justices?

Response: Aside from Justice White's request this year that the Court's appropriation language be changed to allow Associate Justices to be driven between home and work if the Court deems that their protection so warrants, the Court, with Subcommittee approval, has been adding cars in a motor pool arrangement. The motor pool, which consists of six (6) leased passenger motor vehicles and a station wagon, serves the needs of the Court generally and Associate Justices, officers and senior personnel of the Court.

Question: What would it cost to lease the cars?

Response: Currently, the cost of leasing a car is $3,425 per year.

Question: In 1978 we were assured that the existing court personnel could serve as drivers to the Justices. If we provided the cars, could the drivers be found among current Court staffing?

Response: Yes. Under the motor pool arrangement, drivers could be provided from within existing Court staff.

Question: In thinking of the security of the Supreme Court, I am mindful that the current space assignments locate the Justices in some vulnerable places. Installation of the bullet resistant glass will help but has any thought been given to moving the Justices to safer locations in the building? In particular, could not the conferences of the Justices be conducted in a more secure location than at present?

Response: There has been no thought given to moving the Justices' Chambers to safer locations in the building. The cost of the resulting space renovation would be prohibitive and unnecessary. Similarly, while in terms of external vulnerability, there may be a more secure location within the building to conduct the conferences of the Justices, the present location is most convenient and secure in terms of internal building operations. The present conference location is well away from the public areas of the building through which the Justices would have to pass to get to other possible conference rooms. We feel that the installation of the bullet resistant glass in the Chambers and Conference room will adequately protect the Justices.

Director of Administrative Office

Question: When did Mr. Foley retire as Director of the Administrative Office?

Response: Mr. Foley retired March 1, 1985.

Question: What is the procedure for filling this position and when is a replacement expected to be nominated?

Response: The position of Director of the Administrative Office of the U.S. Courts is a Supreme Court appointment. As such, the Conference of all nine Justices names the person to fill this position. Interviews of the most highly qualified candidates have been conducted by a panel of three Justices. A selection will be announced soon.

Staff Vacancies

Question: At last year's hearings we were told that 10% of the Court's authorized positions were vacant. How many vacancies do you have at this time?

Response: Currently, 32 of the Court's authorized 317 positions are vacant. We are currently recruiting to fill most of these vacancies.

Sentencing of Drug Traffickers

Question: The second annual report was recently published by the President's Organized Crime Drug Enforcement Task Force Program (OCDE). On page 98 of that report, we find that two-thirds of the 1,400 defendants convicted pursuant to the OCDE efforts received terms of 5 years or less. Drug Enforcement Officials tell us that judges are reluctant to impose lengthier sentences on persons from their own communities, and that they get longer terms when the judge is brought in from another area.

Generally speaking, can't something be done in the Judicial Conference or another forum to prod the Judiciary into making the punishment fit the crime?

Response: Your concern that the punishment fit the crime was embodied in the Sentencing Reform Act of 1984, which was chapter II of the Comprehensive Crime Control Act of 1984, P. L. 98-473. As you know, the Act creates a Sentencing Commission that will establish for the consideration of Congress, guidelines for judges to use in sentencing convicted offenders. Seven voting members will be appointed by the President with the advice and consent of the Senate; of the seven, three are to be federal judges who may be chosen from a list that has been submitted to the President by the Judicial Conference. Two other non-voting members are the Attorney General or his designee and the Chairman of the Parole Commission so long as it continues to exist. The Commission is required by statute to make its report by May, 1986. Once these guidelines are in place, it is hoped sentencing of federal offenders will become more uniform throughout the country and from judge to judge.

The present federal sentencing system indeed depends on the individual judges, who generally take into account retribution, deterrence, incapacitation, and rehabilitation in setting a sentence. If the defendant is a first offender, the sentence is often lighter than for repeat offenders. The suggestion that visiting judges tend to be harsher on defendants than are judges sitting in the district permanently is not one often heard nor is it likely that visiting judges impose sentencing in a high percentage of cases in the district visited. The authority of the Chief Justice to transfer judges into a district is activated only with a certificate of necessity from the chief judge of the Circuit (28 U.S.C. §292(d)). Transfers of judges made within the Circuit are made internally without clearance with the Chief Justice.

It is hoped that the operation of the new Sentencing Commission will help to alleviate concerns about imposition of more uniform and appropriate sentences by the federal courts.

Courts of Appeals, District Courts, and Other Judicial Services

STATEMENT OF CHARLES CLARK, CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

ACCOMPANIED BY ROBERT F. PECKHAM, CHIEF JUDGE, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

INTRODUCTION OF ASSOCIATES

Chairman **Hatfield**. Our next witness is the Honorable Charles Clark, Chairman of the Budget Committee of the Judicial Conference of the United States. Judge Clark is accompanied by the Honorable Robert F. Peckham, Chief Judge of the Northern District of California and Joseph Spaniol, Deputy Director of the Administrative Office of the U. S. Courts.

Judge Clark, Judge Skopil called me last night and briefed me on you and told me to give you the best of all treatment. So you come well recommended today.

Judge **Clark**. Thank you, Senator. I certainly wouldn't want a better recommendation than his.

Chairman **Hatfield**. Your full statement, Judge Clark, will be incorporated into the record. You may proceed to highlight it or summarize it as you wish.

Senator **Specter**. Mr. Chairman, before we proceed, may I interrupt for just a moment? I arrived a little late because of obligations at other subcommittee meetings. I wonder if I might submit other questions to be answered.

Chairman **Hatfield**. For Judge Clark or for the previous witness?

Senator **Specter**. For the previous witnesses.

Chairman **Hatfield**. Yes. Your questions may be submitted, and it was indicated at the time that we excused the other witnesses that there probably would be questions submitted in writing. Yours certainly will be included.

Senator **Specter**. Thank you very much, Mr. Chairman.

Chairman **Hatfield**. Go ahead, Judge Clark.

GENERAL STATEMENT

Judge **Clark**. It is my understanding that a copy of the statement that was submitted for the record will be included.

Chairman **Hatfield**. It has, and it will be included.

Judge **Clark**. Let me say, to highlight it, that the present request of the 1986 budget includes an amount $87,525,000 over 1985. Of this figure, $34,635,000 constitutes adjustments to base. These are things that are going to happen to us under present programs and under present levels of operations. An additional $52,890,000 represents program changes. We are asking for an additional 1,449 positions.

These are the principal places that those people will work, if they are granted to us; 106 of these positions will be magistrates or staffs of magistrates; 333 positions for deputy clerks in the Courts of Appeals and the District Courts; 489 deputy clerks for Bankruptcy. As the Senator probably knows, we have had tremendous increases in bankruptcy filings since the 1978 Bankruptcy Act. We are still far behind in servicing that work which you have given us. Finally, 447 positions are needed for probation and pre-trial.

That completes the highlights of the operating budget for the Courts of Appeals and the District Courts.

If the Committee has any questions for us, Judge Peckham, Mr. Spaniol, and myself will attempt to answer them.

[The statement follows:]

PREPARED STATEMENT OF JUDGE CHARLES CLARK
BUDGET COMMITTEE
JUDICIAL CONFERENCE OF THE UNITED STATES

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR THE OPPORTUNITY TO ONCE AGAIN PRESENT TO YOU THE BUDGET ESTIMATES FOR THE OPERATION OF THE UNITED STATES COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS FOR FISCAL YEAR 1986.

JUDGE PECKHAM, WHO IS THE CHIEF JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA AND A MEMBER OF THE BUDGET COMMITTEE, WILL ASSIST ME IN THE PRESENTATION. MR. JOSEPH F. SPANIOL, DEPUTY DIRECTOR OF THE ADMINISTRATIVE OFFICE, AND MEMBERS OF HIS STAFF WILL ALSO ASSIST ME. WE SHALL ATTEMPT TO ANSWER ANY QUESTIONS YOU MAY HAVE AND WILL PROVIDE ANY ADDITIONAL MATERIAL YOU MAY REQUIRE.

MR. CHAIRMAN, I WOULD LIKE TO ASSURE YOU THAT, AS IN PREVIOUS YEARS, OUR BUDGET REQUESTS FOR 1986 REPRESENT THE SMALLEST INCREASES POSSIBLE CONSISTENT WITH THE EVER GROWING WORKLOAD OF THE COURTS. INCLUDING A BUDGET AMENDMENT AND A CONCESSION DISCUSSED BELOW, THE BUDGET REQUIREMENTS FOR THE COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS TOTAL $1,059,541,000, $87 MILLION AND 1,449 POSITIONS OVER FISCAL YEAR 1985. APPROXIMATELY 40 PERCENT OF THE INCREASE IN FUNDING IS FOR THE COST OF MAINTAINING THE CURRENT LEVEL OF SERVICES. THE REMAINING AMOUNT AND THE ADDITIONAL POSITIONS ARE REQUIRED PRINCIPALLY DUE TO CONTINUED INCREASES IN CASE FILINGS AND THE IMPACT OF 85 NEWLY CREATED CIRCUIT AND DISTRICT JUDGESHIPS.

INCREASED CASELOAD

INCREASES IN THE JUDICIARY CASELOADS ARE SHOWN ON THE FIVE-YEAR TABLE AT ATTACHMENT 1. FROM FISCAL YEAR 1979 THROUGH FISCAL YEAR

1984, THE COMBINED TOTAL OF CIVIL AND CRIMINAL CASE FILINGS INCREASED BY 106,000 (56 PERCENT) AND APPEALS BY 11,000 (53 PERCENT). BANKRUPTCY FILINGS INCREASED BY 106,000 PETITIONS (44 PERCENT). THE MAGISTRATES' WORKLOAD INCREASED BECAUSE OF ADDITIONAL DUTIES DELEGATED TO THEM BY THE JUDGES OF THE DISTRICT COURTS. THE PROBATION SERVICE WORKLOAD ALSO EXPERIENCED A NET INCREASE DUE TO THE RAPIDLY GROWING NUMBER OF PRESENTENCE INVESTIGATIONS. DURING THIS SAME FIVE-YEAR PERIOD, THE STAFFING OF THE COURTS OF APPEALS, DISTRICT COURTS, AND BANKRUPTCY COURTS WAS INCREASED ONLY 26 PERCENT, FROM 12,160 TO 15,361 POSITIONS. I BELIEVE THIS LIMITED INCREASE IN PERSONNEL REFLECTS, IN PART, IMPROVED MANAGEMENT AND GROWING EFFICIENCY IN THE ADMINISTRATION OF THE BUSINESS OF THE COURTS.

AUTOMATION IN THE COURTS

THE INVESTMENT WHICH THE COURTS ARE MAKING IN AUTOMATION AS WELL AS THE PROGRESS WHICH HAS BEEN ACHIEVED TO DATE REFLECTS THE COMMITMENT OF THE JUDICIARY TO PROVIDING IMPROVED SERVICES TO THE BAR AND LITIGANTS. AS I HAVE REPORTED IN PREVIOUS MEETINGS, THE DIRECTORS OF THE FEDERAL JUDICIAL CENTER AND THE ADMINISTRATIVE OFFICE HAVE DEVELOPED A FIVE-YEAR PLAN (ATTACHMENT 2 REPORTS EXPENDITURES FOR THIS PLAN) WHICH GOVERNS THE CONTINUED AUTOMATION OF THE COURTS. THE COURT ADMINISTRATION COMMITTEE OF THE JUDICIAL CONFERENCE ADOPTED THIS PLAN AND REQUESTED THAT, BECAUSE OF FREQUENT CHANGES AND IMPROVEMENTS IN THE STATE OF THE ART AND THE NEEDS OF THE COURTS, THE FIVE-YEAR PLAN SHOULD REMAIN UNDER CONSTANT STUDY AND BE REVISED AS NEEDED.

BUDGET AMENDMENT

AT THIS POINT, I WISH TO AMEND OUR 1986 BUDGET REQUEST FOR AN ADDITIONAL 168 POSITIONS AND $4,280,000 FOR THE BANKRUPTCY APPROPRIATION. AS I REPORTED LAST YEAR, OUR PERSONNEL REQUEST FOR THE BANKRUPTCY COURTS REPRESENTED THE USE OF A WORK MEASUREMENT FORMULA DEVISED IN 1980 TO DETERMINE HOW MANY POSITIONS ARE NEEDED IN THIS

OFFICE. SOME POSITIONS DID NOT EXIST WHEN THAT SURVEY WAS CONDUCTED AND CERTAIN FUNCTIONS WERE NOT BEING PERFORMED. AS A RESULT, THE ADMINISTRATIVE OFFICE UNDERTOOK A NEW WORK MEASUREMENT STUDY WHICH HAS BEEN REVIEWED BY THE APPROPRIATE COMMITTEES OF THE JUDICIAL CONFERENCE AND WAS APPROVED BY THE CONFERENCE AT ITS MEETING IN MARCH.

THE NEW WORK MEASUREMENT FORMULA JUSTIFIES 336 POSITIONS MORE THAN THE 291 WHICH HAVE BEEN REQUESTED FOR THE HANDLING OF INCREASED CASELOAD. THIS WOULD REPRESENT A TOTAL REQUEST OF 627 POSITIONS FOR 1986. HOWEVER, BECAUSE OF TIME CONSTRAINTS UNDER WHICH THE STUDY WAS CONDUCTED, THE NEW FORMULA DOES NOT REFLECT SAVINGS BY REASON OF THE AUTOMATION AND CONTRACTING OUT THE NOTICING FUNCTION. YOUR COMMITTEE, IN ITS REPORT ON THE FISCAL YEAR 1985 BUDGET, STATED THAT IT EXPECTS THE JUDICIARY TO REPORT "SIGNIFICANT SAVINGS" AS A RESULT OF CHARGING THE ESTATES FOR THE COST OF NOTICING. ACCORDINGLY, IT WAS DEEMED INAPPROPRIATE TO REQUEST THE ADDITIONAL 336 POSITIONS PROVIDED UNDER THE NEW FORMULA SO THE BUDGET AMENDMENT REPRESENTS ONE HALF (168) OF THE ADDITIONAL POSITIONS AUTHORIZED BY THAT FORMULA. THE ADMINISTRATIVE OFFICE HAS BEEN ASKED TO QUANTIFY THE SAVINGS THAT WILL BE REALIZED THROUGH CONTRACTED AND AUTOMATED NOTICING SO THAT THE SAVINGS CAN BE TAKEN INTO ACCOUNT IN CALCULATING THE FISCAL YEAR 1987 BUDGET REQUIREMENTS.

CONCESSION

IN VIEW OF THE PRESSING NEED TO REDUCE THE DEFICIT AND THE EFFORT OF THE EXECUTIVE AND LEGISLATIVE BRANCHES TO MAKE SUBSTANTIAL REDUCTIONS IN THEIR BUDGET ESTIMATES, THE JUDICIARY HAS DETERMINED TO DEFER THE APPOINTMENT OF PEOPLE TO THE NEW POSITIONS REQUESTED IN THE BUDGET AND TO ALLOCATE THOSE POSITIONS ON A QUARTERLY BASIS THROUGH THE 1986 FISCAL YEAR RATHER THAN AT OR NEAR THE BEGINNING OF THE YEAR. THE JUDICIAL CONFERENCE AUTHORIZED THE BUDGET COMMITTEE TO MAKE THIS CONCESSION WHICH WILL REDUCE THE

REQUESTED LEVEL OF FUNDING FOR FISCAL YEAR 1986 BY $12,150,000, AS INDICATED IN ATTACHMENT 3.

APPROPRIATIONS REQUESTED FOR FISCAL YEAR 1986

THE INCREASE IN OUR BUDGETARY REQUIREMENTS, 1986 OVER 1985, IS $87,525,000 OF WHICH $34,635,000 REPRESENTS ADJUSTMENTS TO BASE AND $52,890,000 PROGRAM CHANGES. IF WE EXCLUDE THE SO-CALLED ADJUSTMENTS TO BASE, WHICH ARE OF AN UNCONTROLLABLE NATURE, OUR ADDITIONAL PROGRAM REQUIREMENTS WOULD REPRESENT A FIVE PERCENT INCREASE IN THE BUDGET. THESE PROGRAM REQUIREMENTS CONSIST PRIMARILY OF 1,449 POSITIONS: 106 FOR THE MAGISTRATE SYSTEM, 333 DEPUTY CLERKS FOR THE COURTS OF APPEALS AND DISTRICT COURTS, 489 DEPUTY CLERKS FOR BANKRUPTCY COURTS, 447 FOR PROBATION AND PRETRIAL SERVICES, 65 OTHER SUPPORTING PERSONNEL OF THE COURTS, EIGHT FEDERAL PUBLIC DEFENDERS AND FOUR POSITIONS RELATIVE TO COURT SECURITY.

REPORT ON THE CASELOAD

THE PENDING CASELOAD IN THE COURTS OF APPEALS REACHED A RECORD HIGH OF 23,818 DESPITE A SIGNIFICANT INCREASE IN TERMINATIONS. THE NUMBER OF APPEALS TERMINATED IN FISCAL YEAR 1984 INCREASED BY 66 PERCENT OVER 1979. HOWEVER, THIS INCREASE IN TERMINATIONS BARELY KEPT PACE WITH THE GROWTH IN NEW FILINGS WHICH INCREASED 53 PERCENT DURING THE SAME PERIOD. IT IS HOPED THAT THE NEW CIRCUIT JUDGESHIPS CREATED BY THE OMNIBUS JUDGESHIP ACT OF 1984 WILL BRING CASE TERMINATIONS IN LINE WITH CASE FILINGS.

IN THE DISTRICT COURTS, CRIMINAL FILINGS ROSE FROM 31,196 IN 1979 TO 37,829 IN 1984, AN INCREASE OF 21 PERCENT. THE TREND IN CIVIL FILINGS CONTINUES TO MOVE UPWARD WITHOUT PAUSE; APPROXIMATELY 260,000 CASES WERE FILED IN FISCAL YEAR 1984. OVER THE PAST FIVE YEARS, THE NUMBER OF CIVIL CASES FILED HAS INCREASED BY 62 PERCENT. IT IS TO BE NOTED THAT, NOTWITHSTANDING A 62 PERCENT INCREASE IN THE RATE OF TERMINATIONS ACHIEVED IN 1984 (287,748) OVER 1979 (177,948), THE GROWTH IN CIVIL AND

CRIMINAL FILINGS OVER THE PAST FIVE YEARS HAS CAUSED THE PENDING CASELOAD TO GROW BY 38 PERCENT, TO A NEW RECORD OF 272,387.

ALTHOUGH WE PROJECT BANKRUPTCY PETITIONS WILL INCREASE AGAIN IN 1985 AND 1986, PETITIONS HAVE DECLINED SINCE 1982, FROM 374,235 TO 346,723. THIS REPRESENTS A DECREASE OF SEVEN PERCENT. HOWEVER, THE NUMBER OF FILINGS IS STILL 44 PERCENT GREATER THAN THE FILINGS FOR 1979. DESPITE AN INCREASE IN TERMINATIONS OF 51 PERCENT SINCE 1979, THE PENDING CASELOAD OF BANKRUPTCY PETITIONS ROSE TO A RECORD HIGH OF 611,356, AN INCREASE OF 130 PERCENT. ALSO, IN 1984, WE DOCKETED 187,121 ADVERSARY PROCEEDINGS.

TRANSFER OF BANKRUPTCY APPROPRIATION TO OTHER APPROPRIATIONS

OUR 1986 BUDGET ESTIMATES REFLECT THE TRANSFER OF THE BANKRUPTCY APPROPRIATION TO "SALARIES OF JUDGES ($18,413,000), SALARIES OF SUPPORTING PERSONNEL ($80,571,000), AND EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS ($34,108,000)." THIS TRANSFER HAS BEEN APPROVED BY THE JUDICIAL CONFERENCE.

SINCE THE BANKRUPTCY SYSTEM IS NOW FUNCTIONING AS A UNIT OF THE DISTRICT COURTS, THE JUDICIARY BELIEVES THE MAINTENANCE OF A SEPARATE APPROPRIATION ACCOUNT TO SUPPORT THE BANKRUPTCY COURT SYSTEM IS NO LONGER APPROPRIATE. THE TRANSFER OF FUNDS WILL STREAMLINE COURT ADMINISTRATION AND IMPROVE THE MANAGEMENT AND CONTROL OF FUNDS. ALSO SEPARATE ACCOUNTS WILL NO LONGER HAVE TO BE MAINTAINED IN THE DISTRICT COURTS AND BANKRUPTCY COURTS. THIS SHOULD INCREASE THE SHARING OF FACILITIES SUCH AS TELEPHONE SYSTEMS, COMPUTER SERVICES AND THE RENTAL OF COPY EQUIPMENT. ADDITIONALLY, IT WILL FACILITATE THE CONSOLIDATION OF PROCUREMENT TRANSACTIONS FOR OFFICE EQUIPMENT AND FURNITURE, CONTRACTUAL SERVICES, SUCH AS COURT REPORTERS, SUPPLIES, AND MAINTENANCE OF INVENTORIES.

SALARIES OF JUDGES

MR. CHAIRMAN, OUR FISCAL YEAR 1986 REQUEST FOR THIS

APPROPRIATION REPRESENTS AN INCREASE OF $25,278,000 OVER 1985 BASED ON THE FOLLOWING:

1. APPROVAL FOR THE TRANSFER OF THE POSITIONS AND FUNDS FROM THE APPROPRIATION "BANKRUPTCY COURTS, SALARIES AND EXPENSES,"
2. ANNUALIZATION OF THE SALARIES ASSOCIATED WITH THE BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIP ACT OF 1984,
3. ANNUALIZATION OF A 3.5 PERCENT INCREASE IN JUDGES SALARIES INCLUDED IN THE PAY COST SUPPLEMENTAL, AND
4. AN ANTICIPATED REDUCTION IN THE NUMBER OF VACANCIES.

TAKING INTO ACCOUNT THE 1986 IMPACT OF THE "BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIP ACT OF 1984," WE ESTIMATE THAT IN FISCAL YEAR 1985 THERE WILL BE, ON THE AVERAGE, 26 JUDGESHIP VACANCIES. IN ADDITION, PROVISION HAS BEEN MADE FOR AN AVERAGE NET INCREASE OF 12 JUDGES IN SENIOR STATUS IN FISCAL YEAR 1986. BY 1986, 117 JUDGES WILL BE ELIGIBLE TO TAKE SENIOR STATUS.

SALARIES OF SUPPORTING PERSONNEL

WE HAVE REQUESTED $503,698,000, AN INCREASE OF $118,772,000 (WHICH INCLUDES $80,571,000 TRANSFERRED FROM THE BANKRUPTCY APPROPRIATION) OVER 1985 AFTER ADJUSTING THE APPROPRIATIONS FOR PAY COSTS, AND 951 ADDITIONAL SUPPORTING PERSONNEL FOR THE COURTS OF APPEALS AND DISTRICT COURTS. A SUMMARY OF THE ADDITIONAL POSITIONS IS CONTAINED ON PAGE 6.3 OF OUR BUDGET JUSTIFICATION.

A MAJOR PORTION (266 OF THE ADDITIONAL POSITIONS) CAN BE ATTRIBUTED TO INCREASED WORKLOAD IN CIRCUIT AND DISTRICT COURT CLERKS' OFFICES, WHILE 140 ADDITIONAL POSITIONS WILL BE REQUIRED TO KEEP UP WITH

THE WORKLOAD OF THE PROBATION OFFICES, AND 307 ADDITIONAL POSITIONS FOR THE PERFORMANCE OF PRETRIAL SERVICES IN PROBATION OFFICES.

DEPUTY CLERKS

WE ARE REQUESTING AN ADDITIONAL 213 DEPUTY CLERK POSITIONS FOR THE DISTRICT COURTS. THIS IS BASED ON A PROJECTED NINE PERCENT INCREASE IN CIVIL AND CRIMINAL CASE FILINGS IN 1986 AND SUPPORTED BY THE MOST RECENT WORK MEASUREMENT STUDY OF THE DISTRICT COURT CLERKS' OFFICES. THERE HAS BEEN A TREMENDOUS GROWTH IN CIVIL FILINGS. ALTHOUGH RECOVERY OF OVERPAYMENTS AND SOCIAL SECURITY CASES HAVE ACCOUNTED FOR MUCH OF THE GROWTH IN OVERALL CIVIL CASELOAD DURING THE PAST FEW YEARS, THE RECOVERY OF OVERPAYMENTS CASES IS EXPECTED TO LEVEL OFF AT ABOUT 50,000 PER YEAR THROUGH AT LEAST FISCAL YEAR 1986. SOCIAL SECURITY CASES WHICH HAVE MORE THAN DOUBLED FROM 13,541 CASES IN 1982 TO 27,293 CASES IN 1984 ARE EXPECTED TO DECREASE SLIGHTLY TO 24,000 CASES IN 1986. ALL OTHER CIVIL FILINGS ARE EXPECTED TO INCREASE SIGNIFICANTLY IN 1986 BASED ON HISTORICAL TRENDS IN THIS CATEGORY.

THE CIVIL CASELOAD ESTIMATES FOR THE FISCAL YEAR 1986 BUDGET CONTAIN APPROXIMATELY 2,500 STUDENT LOAN CASES FOR 1985 AND 1986. HOWEVER, WE HAVE RECENTLY LEARNED THAT THE POTENTIAL FOR ADDITIONAL STUDENT LOAN CASES IN THE COURTS COULD BE AS HIGH AS 50,000 CASES IN FISCAL YEAR 1985. THE IMPACT OF THESE FILINGS ON OUR 1985 AND 1986 BUDGETS CANNOT BE ACCURATELY PREDICTED. WE MAY BE REQUIRED TO REQUEST ADDITIONAL DEPUTY CLERKS TO PROCESS THESE CASES IF THEY, IN FACT, MATERIALIZE.

AN ADDITIONAL 27 PRO SE LAW CLERK AND CLERICAL SUPPORT POSITIONS ARE REQUESTED. A SIMILAR REQUEST WAS NOT APPROVED IN FISCAL YEAR 1985 BECAUSE YOUR COMMITTEE BELIEVED SUCH A PROGRAM WOULD CONSTITUTE AN AUGMENTATION OF THE LAW CLERKS AND LEGAL ASSISTANTS ALREADY AUTHORIZED TO PERFORM LEGAL RESEARCH AND OTHER WORK RELATED TO PRISONER PETITIONS. IN YOUR REPORT, YOU RECOMMENDED THAT THE JUDICIAL CONFERENCE REEVALUATE THIS PROGRAM BEFORE ANY FURTHER EXPANSION IS AUTHORIZED. ACCORDINGLY, THE ADMINISTRATIVE

OFFICE CONDUCTED A COMPREHENSIVE EVALUATION OF THE PRO SE LAW CLERK PROGRAM. WE FOUND THAT IT NOT ONLY FUNCTIONS EFFECTIVELY AND EFFICIENTLY IN PROCESSING PRISONER LITIGATION, BUT IT ALSO COMPLEMENTS RATHER THAN DUPLICATES THE EXISTING LEGAL RESOURCES IN PARTICIPATING COURTS. THE PROGRAM SHOULD BE CONTINUED AND EXPANDED AS JUSTIFIED. THESE FINDINGS AND RECOMMENDATIONS WERE REVIEWED BY THE SUBCOMMITTEE ON SUPPORTING PERSONNEL AND THE COMMITTEE ON COURT ADMINISTRATION. THEY WERE APPROVED BY THE JUDICIAL CONFERENCE DURING THEIR MEETING IN MARCH. A COPY OF THE REPORT WAS TRANSMITTED TO THE STAFF OF YOUR COMMITTEE.

AN ADDITIONAL 40 DEPUTY CLERK POSITIONS ARE REQUESTED FOR THE IMPLEMENTATION OF AUTOMATION IN THE COURTS. THE CURRENT FIVE-YEAR PLAN ANTICIPATES THAT 20 COURTS WILL RECEIVE AUTOMATED EQUIPMENT IN FISCAL YEAR 1985 AND AN ADDITIONAL 20 COURTS WILL RECEIVE AUTOMATED EQUIPMENT IN FISCAL YEAR 1986. THE ADMINISTRATIVE OFFICE AND THE FEDERAL JUDICIAL CENTER HAVE JOINTLY DETERMINED THAT A COURT RECEIVING AUTOMATED EQUIPMENT WILL REQUIRE A SYSTEMS ADMINISTRATOR TO MAINTAIN THE EQUIPMENT AND COORDINATE THE USE OF THE VARIOUS SYSTEMS APPLICATIONS WHICH WILL BE PROVIDED TO THE COURTS. THEREFORE AN ADDITIONAL 40 DEPUTY CLERK POSITIONS, OVER AND ABOVE THE NUMBER OF DEPUTY CLERK POSITIONS JUSTIFIED UNDER THE STAFFING FORMULA, WILL BE REQUIRED TO MEET THESE NEEDS.

AN ADDITIONAL 53 POSITIONS ARE REQUESTED FOR THE COURTS OF APPEALS CLERKS' OFFICES BASED ON THE PROJECTED GROWTH IN FILINGS, FROM 34,000 IN 1985 TO 36,500 IN 1986. THIS REQUEST RESULTS IN AN OVERALL RATIO OF 75 APPELLATE FILINGS PER DEPUTY CLERK, THE RATIO APPROVED BY THE JUDICIAL CONFERENCE AND USED AS A GUIDELINE SINCE 1973. IN PRIOR YEARS THE CLERKS' OFFICES HAVE BEEN ABLE TO FUNCTION AT STAFFING LEVELS LESS THAN THE 75/1 RATIO WOULD HAVE JUSTIFIED, HOWEVER, THE MANPOWER NEEDS OF OPERATING NEW MANNED DIVISIONAL OFFICES IN SEVERAL OF THE CIRCUITS AND THE ADDITIONAL DEMANDS OF AUTOMATION WILL REQUIRE THE FULL STAFFING COMPLEMENT ENVISIONED UNDER THE APPROVED STAFFING FORMULA.

THE COMPREHENSIVE CRIME CONTROL ACT OF 1984 MANDATED THAT THE JUSTICE DEPARTMENT SHOULD BE RESPONSIBLE FOR THE COLLECTION OF FINES INCLUDING INTEREST AND THE ASSESSMENT OF PENALTIES. THE COURTS NEVER HAVE BEEN RESPONSIBLE FOR THE RECEIPT OF FINES AND ENGAGE NEITHER IN ENFORCEMENT, NOR ASSESSMENT OF PENALITIES AND INTEREST. THEREFORE, WE DO NOT ENVISION ANY SIGNIFICANT SAVINGS OF PERSONNEL IN THE COURTS. WE ARE COOPERATING WITH THE DEPARTMENT OF JUSTICE TO ENSURE THAT AN EFFICIENT AND EFFECTIVE SYSTEM FOR FINE COLLECTION IS ESTABLISHED.

PROBATION SERVICE

OUR REQUEST INCLUDES 140 ADDITIONAL PROBATION OFFICE POSITIONS AND 307 ADDITIONAL POSITIONS DESIGNATED TO PERFORM PRETRIAL SERVICES IN PROBATION OFFICES. PERSONS UNDER SUPERVISION BY PROBATION OFFICERS ARE EXPECTED TO INCREASE BY FOUR PERCENT IN THE CURRENT YEAR OVER WHAT WAS PROJECTED IN OUR 1985 BUDGET REQUEST. THIS TREND IS PROJECTED TO CONTINUE WITH AN ADDITIONAL INCREASE OF THREE PERCENT IN 1986. INVESTIGATIVE REPORTS INCREASED FROM 111,660 IN FISCAL YEAR 1980 TO 123,643 IN 1984, AN INCREASE OF 11 PERCENT. THE NUMBER OF PRESENTENCE REPORTS PREPARED IN 1984 HAS INCREASED FROM PREVIOUS YEARS AS DID MOST OTHER INVESTIGATIVE REPORTS.

PRETRIAL SERVICES

THE ADDITIONAL POSITIONS REQUESTED FOR PRETRIAL SERVICES ARE TO PROVIDE FOR PRETRIAL SERVICES IN EXISTING PROBATION OFFICES. THESE ADDITIONAL POSITIONS ARE BASED ON A RECENT WORK MEASUREMENT STUDY. THIRTEEN DISTRICTS WERE SELECTED FOR THIS STUDY, FOUR INDEPENDENT PRETRIAL SERVICES OFFICES AND NINE PROBATION OFFICES PERFORMING PRETRIAL WORK. THE NEW WORK MEASUREMENT FORMULA WAS APPROVED BY THE JUDICIAL CONFERENCE AT THIS LAST SESSION.

CURRENTLY NINE JUDICIAL DISTRICTS HAVE ESTABLISHED PRETRIAL SERVICES IN OFFICES SEPARATE FROM PROBATION. BASED ON THE WORK

MEASUREMENT FORMULA, 109 POSITIONS WILL BE REQUIRED TO HANDLE THE WORKLOAD IN THESE NINE SEPARATE OFFICES.

MR. CHAIRMAN, LAST YEAR YOUR COMMITTEE DENIED OUR 1985 REQUEST AND REDUCED THE FUNDING AND POSITIONS FOR THIS PROGRAM TO $4,172,000 AND 173, RESPECTIVELY, BECAUSE THERE APPEARED TO BE A QUESTION AS TO WHETHER THE PRETRIAL SERVICES ACT AUTHORIZES THE APPOINTMENT OF ADDITIONAL PERSONNEL IN PROBATION OFFICES TO PERFORM PRETRIAL SERVICES. SINCE THAT TIME, THE SUBCOMMITTEE ON CRIME OF THE COMMITTEE ON THE JUDICIARY FIRST SCHEDULED AND THEN CANCELLED A HEARING CONCERNING THE IMPLEMENTATION OF THE PRETRIAL SERVICES ACT. I AM SUBMITTING FOR YOUR INFORMATION AND, IF YOU DESIRE, FOR THE RECORD, A STATEMENT OF JUDGE TJOFLAT, CHAIRMAN OF THE JUDICIAL CONFERENCE COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM, WHICH WAS PREPARED FOR THAT HEARING. THE COMMITTEE BELIEVES JUDGE TJOFLAT HAS FRAMED THE ISSUE WELL AND HIS POSITION IS SOUND. ESSENTIALLY, JUDGE TJOFLAT PROPOSES THAT "LIMITING ADDITIONAL RESOURCES AVAILABLE FOR PRETRIAL SERVICES TO SEPARATE UNITS WILL NOT ACHIEVE THE RESULT THAT APPARENTLY IS INTENDED. THE COURTS NEED RESOURCES TO PERFORM BOTH PRETRIAL AND PROBATION FUNCTIONS ADEQUATELY -- THUS PROVIDING A CLEAR DEMONSTRATION OF THE MERITS OF BOTH PRETRIAL ARRANGEMENTS. AS PEOPLE ARE APPOINTED TO DO THIS WORK, AND GAIN EXPERIENCE IN ITS PERFORMANCE, I AM CONVINCED THAT WE WILL SEE CONTINUING IMPROVEMENT -- AND MORE SEPARATE OFFICES BEING ESTABLISHED BECAUSE THEY WILL ACTUALLY BE JUSTIFIABLE IN TERMS OF THE EXPEDITIOUS AND EFFECTIVE PROVISION OF SERVICES AND COST EFFECTIVENESS." THE JUDICIAL CONFERENCE ENDORSES THIS POSITION.

MAGISTRATES

OUR REQUEST ALSO INCLUDES 19 ADDITIONAL FULL-TIME MAGISTRATES AND SUPPORTING STAFF AND 31 ADDITIONAL LEGAL ASSISTANTS. THE JUDICIAL CONFERENCE HAS TAKEN A DELIBERATELY CONSERVATIVE POSITION IN AUTHORIZING THE REQUEST FOR ADDITIONAL FULL-TIME MAGISTRATES, LIMITING SUCH AUTHORIZATIONS TO THOSE COURTS IN WHICH THE WORKLOAD AND

OTHER FACTORS CREATE A COMPELLING NEED FOR ADDITIONAL RESOURCES. MOREOVER, THE SUCCESSFUL USE OF MAGISTRATES TO RELIEVE CASELOAD PRESSURES IN THE DISTRICT COURTS HAS BEEN RECOGNIZED AND IS CONTINUING TO EXPAND THROUGHOUT THE COUNTRY.

NATIONAL COURT LIBRARY SYSTEM

THE JUDICIARY IS CONTINUING TO PHASE IN THE EXPANSION OF THE NATIONAL COURT LIBRARY SYSTEM CONSISTENT WITH THE RECOMMENDATIONS OF YOUR COMMITTEE. IN FISCAL YEAR 1986, THE NATIONAL COURT LIBRARY SYSTEM WILL HAVE COMPLETED FIVE YEARS OF OPERATION. WE EXPECT TO COMPLETE THE STAFFING OF THIS SYSTEM BY 1988 WITH NEARLY EQUAL INCREMENTS OF PERSONNEL EACH YEAR. OUR REQUEST FOR FISCAL YEAR 1986 IS FOR 19 POSITIONS.

THE AIM OF THIS PROGRAM IS TO IMPROVE THE LEVEL OF SERVICE TO JUDGES. WE ALSO INTEND TO HOLD TO A MINIMUM INCREASES REQUIRED FOR LIBRARY ACCESSION AND CONTINUATION MATERIAL THROUGH BETTER MANAGEMENT OF EXISTING LAWBOOK RESOURCES.

DEFENDER SERVICES

OUR REQUEST FOR FISCAL YEAR 1986 IN THIS APPROPRIATION REPRESENTS AN INCREASE OF $9,005,000 OVER 1985 AFTER TAKING INTO ACCOUNT THE PROPOSED SUPPLEMENTAL OF $17,950,000 FOR FISCAL YEAR 1985. AS YOU KNOW, THIS "NO YEAR" APPROPRIATION IS SUBJECT TO LITTLE CONTROL SINCE OUR REQUIREMENTS ARE BASED ON THE NUMBER OF PERSONS WHO MUST BE REPRESENTED UNDER THE CRIMINAL JUSTICE ACT. REPRESENTATION UNDER THE ACT CONTINUES TO INCREASE MAINLY DUE TO INCREASES IN CRIMINAL FILINGS. THE INCREASINGLY COMPLEX NATURE OF THE CASES IN SUCH AREAS AS FRAUD, EMBEZZLEMENT, AND HIGH TECHNOLOGY ALSO CONTRIBUTES TO INCREASES IN THE AVERAGE CASE COST.

THE 15 PERCENT INCREASE IN FUNDING OVER 1985, IS REQUESTED PRIMARILY FOR THE INCREASE IN HOURLY RATES OF COMPENSATION AND CASE MAXIMUMS PAYABLE TO PRIVATE CRIMINAL JUSTICE ACT PANEL ATTORNEYS AS

A RESULT OF AMENDMENTS TO THE CRIMINAL JUSTICE ACT OF 1964 CONTAINED IN CHAPTER XIX OF THE COMPREHENSIVE CRIME CONTROL ACT OF 1984 (TITLE II, P.L. 98-473, 98 STAT. 1837, OCTOBER 12, 1984). CHAPTER XIX DOUBLES BOTH THE HOURLY RATES AND THE CASE COMPENSATION MAXIMUMS PAYABLE TO PRIVATE ATTORNEYS. A PART OF THE INCREASE IN FUNDING IS ALSO BASED ON THE ADDITION OF EIGHT DEFENDER POSITIONS TO HANDLE A PROJECTED INCREASE IN CRIMINAL JUSTICE ACT CASELOAD. FINALLY, WE HAVE INCLUDED INCREASES IN COSTS DUE TO INFLATION, TELEPHONE SYSTEMS ACQUISITIONS, AND COMPUTER-ASSISTED LEGAL RESEARCH FOR FEDERAL DEFENDER ORGANIZATIONS.

FEES OF JURORS AND COMMISSIONERS

WE ARE REQUESTING AN INCREASE IN BUDGET AUTHORITY OF $2,500,000 IN THIS APPROPRIATION OVER THE AMOUNT AVAILABLE IN 1985. THIS IS BASED ON PROJECTED FUNDING INCREASES OF FIVE PERCENT IN PETIT JUROR ACTIVITY AND FIVE PERCENT IN GRAND JUROR ACTIVITY IN 1986. AS A RESULT OF EFFORTS BY THE UNITED STATES DEPARTMENT OF JUSTICE AND THE UNITED STATES ATTORNEYS TO MAKE MORE EFFECTIVE USE OF GRAND JURORS, THE AVERAGE NUMBER OF DEFENDANTS INDICTED PER GRAND JURY SESSION HAS INCREASED STEADILY SINCE 1981. THE AVERAGE OF 2.86 DEFENDANTS INDICTED PER GRAND JURY SESSION FOR THE YEAR ENDED JUNE 30, 1984 WAS THE HIGHEST SINCE 1979 AND THIS TREND IS CONTINUING IN FISCAL YEAR 1985. PETIT JURY TRIAL DAYS ARE PROJECTED TO INCREASE EIGHT PERCENT IN FISCAL YEAR 1986, WITH ONE-HALF OF THIS INCREASE ASSOCIATED WITH THE 61 NEW DISTRICT JUDGESHIPS AUTHORIZED BY CONGRESS IN 1984. ALSO TOTAL AVAILABLE JURORS ARE PROJECTED TO INCREASE BY THREE PERCENT IN 1986. AT THE SAME TIME, THE FIRST-DAY JUROR UTILIZATION RATE IMPROVED IN 1984 OVER 1983 WITH THE INDEX OF UNUTILIZED JURORS DROPPING FROM 36.9 PERCENT TO 36.5 PERCENT.

EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS

EXCLUDING TRANSFERS FROM OTHER APPROPRIATIONS DESCRIBED ELSEWHERE ($34,108,000), THE ADJUSTMENT TO BASE IS REDUCED BY $14,623,000

OF WHICH THE LARGEST PART, $10,911,000, REFLECTS ANNUALIZATION OF EXPENSES OFFSET BY NONRECURRING EXPENSES ASSOCIATED WITH THE CREATION OF THE 85 NEW JUDGESHIPS BY THE BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIP ACT OF 1984. WE ARE REQUESTING PROGRAM CHANGES OF $9,228,000. OF THIS AMOUNT, $6,598,000 REPRESENTS EXPENSES RELATING TO REQUESTS FOR NEW PERSONNEL UNDER THE HEADING "SALARIES OF SUPPORTING PERSONNEL," $275,000 IS FOR SUPPORT OF THE COURT AUTOMATION PROGRAM, $1,555,000 IS FOR FURNITURE AND FURNISHINGS REQUIRED INCIDENT TO PROSPECTIVE PROJECTS AND $800,000 IS FOR THE INCREASE IN NUMBER OF DEFENDANTS ELIGIBLE FOR SOCIAL SERVICES AS A RESULT OF PASSAGE OF THE PRETRIAL SERVICES ACT OF 1982.

BANKRUPTCY COURTS, SALARIES AND EXPENSES

THE FISCAL YEAR 1986 REQUEST FOR THE BANKRUPTCY COURTS REPRESENTS AN INCREASE OF $13,602,000 OVER THE 1985 APPROPRIATION (AS ADJUSTED BY PROPOSED 1985 SUPPLEMENTALS OF $2,540,000). THE REQUEST INCLUDES AN ADDITIONAL 459 DEPUTY CLERK POSITIONS BASED ON A PROJECTED 11 PERCENT INCREASE IN BANKRUPTCY FILINGS IN 1986 OVER 1985. PART OF THE REQUEST (291 POSITIONS) IS FOR ADDITIONAL WORKLOAD AND PART (168 POSITIONS) IS FOR HANDLING THE CURRENT CASELOAD IN A TIMELY MANNER.

SPACE AND FACILITIES

THE BUDGET ESTIMATE FOR 1986 IS $154,007,000, WHICH REPRESENTS AN OVERALL INCREASE OF $11,623,000 OVER THE AMOUNT APPROPRIATED FOR 1985. EXCLUDING THE ADJUSTMENTS TO THE BASE APPROPRIATION FOR UNCONTROLLABLE CHANGES, WE ARE REQUESTING AN INCREASE OF $1,810,000 FOR SPACE RENTAL CHARGES INCIDENT TO OCCUPANCY OF EXPANDED OR REMODELED FACILITIES AND $3,097,000 IS RELATED TO SPACE COSTS FOR THE NEW POSITIONS. IF ALL OF THE NEW POSITIONS ARE NOT APPROVED, THE ESTIMATES FOR SPACE REQUIREMENTS CAN BE REDUCED ACCORDINGLY. OUR 1986 REQUEST DOES NOT INCLUDE ANY RENTAL INCREASES FOR SPACE CURRENTLY OCCUPIED BY THE COURTS. THIS IS A RESULT OF A DECISION MADE BY OFFICE OF MANAGEMENT AND BUDGET IN DECEMBER, 1984, DIRECTING THE

GENERAL SERVICES ADMINISTRATION TO CHARGE THE SAME STANDARD LEVEL USER COST RATES PER SQUARE FOOT FOR FISCAL YEAR 1986 AS IN FISCAL YEAR 1985.

COURT SECURITY

FOR FISCAL YEAR 1986, THE FOURTH YEAR OF OUR FIVE-YEAR JUDICIAL SECURITY PROGRAM, A TOTAL OF $38,116,000 IS REQUESTED FOR THE COURT SECURITY APPROPRIATION. THE INCREASED AMOUNT OVER 1985 IS $11,124,000 WHICH PROVIDES FOR THE ADDITIONAL PERSONNEL NECESSARY TO REACH THE LEVEL OF 1,000 COURT SECURITY OFFICERS AND NECESSARY PROTECTIVE EQUIPMENT IN ALL 94 JUDICIAL DISTRICTS. ONE THOUSAND COURT SECURITY OFFICERS WILL FULLY IMPLEMENT THE CURRENT SECURITY PLANS OF THE DISTRICT COURT COURT SECURITY COMMITTEES. THIS REPRESENTS A 66 PERCENT INCREASE IN THE NUMBER OF COURT SECURITY OFFICERS OVER THOSE PROVIDED IN THE 1985 BUDGET. THIS ESTIMATE IS BASED ON TOTAL SECURITY REQUIREMENTS IDENTIFIED BY COURT SECURITY COMMITTEES IN MAY 1984 AS THOSE REQUIREMENTS EVALUATED AND APPROVED BY THE MARSHALS SERVICE.

OUR COURT SECURITY REQUEST INCLUDES FOUR ADDITIONAL POSITIONS TO PROVIDE FOR ADMINISTRATION OF THE COURT SECURITY PROGRAM. THESE POSITIONS WILL BE ASSIGNED TO THE MARSHALS SERVICE.

MR. CHAIRMAN, OUR BUDGET ESTIMATES FOR FISCAL YEAR 1986 PROVIDE ONLY FOR PROGRAM INCREASES DIRECTLY RELATED TO GROWTH IN WORKLOAD AND NEW LEGISLATION. OUR REQUESTS FOR FISCAL YEAR 1986 ARE CONSISTENT WITH THE NEED TO KEEP FEDERAL EXPENDITURES TO A MINIMUM. ON BEHALF OF THE JUDICIAL CONFERENCE, WE THANK THE COMMITTEE FOR ITS CONSIDERATE RESPONSE TO OUR NEEDS AND WE LOOK FORWARD TO WORKING WITH YOU IN EXPLAINING OUR FISCAL NEEDS FOR 1986.

Attachment 1

COMPARATIVE WORKLOAD DATA
FISCAL YEARS 1979 AND 1984

	F.Y. 1979	F.Y. 1984	% Change
COURTS OF APPEALS:			
Filings	21,127	32,342	+ 53
Terminations	18,695	31,018	+ 66
Pending, End of Year	19,793	23,818	+ 20
DISTRICT COURTS:			
Civil Cases			
Filed	160,016	259,956	+ 62
Terminated	146,389	251,486	+ 72
Pending, End of Year	183,684	251,505	+ 37
Criminal Cases			
Filed	31,196	37,829	+ 21
Terminated	31,559	36,262	+ 15
Pending, End of Year	14,013	20,882	+ 49
Totals			
Filed	191,212	297,785	+ 56
Terminated	177,948	287,748	+ 62
Pending, End of Year	197,697	272,387	+ 38
BANKRUPTCY PETITIONS:			
Filed	240,671	346,723	+ 44
Terminated	210,275	316,822	+ 51
Pending, End of Year	266,070	611,356	+130
Adversary Proceedings*	.....	187,121	.....
MAGISTRATES:			
Criminal Trial Jurisdiction Cases	100,267**	84,475**	- 16
Civil Trial Jurisdiction Cases	570**	3,546**	+522
Preliminary Felony Proceedings	93,429**	109,337**	+ 17
Other Criminal and Civil Matters	97,350**	180,898**	+ 86
PROBATION:			
Persons Received for Supervision	32,663	34,760	+ 6
Persons Under Supervision, End of Year	65,138	63,989	- 2
Presentence Investigations	26,338	31,382	+ 19
Other Investigations	82,869	92,261	+ 11
Petitions for Naturalization	137,624**	218,616**	+ 59
Aliens Naturalized	141,963**	171,750**	+ 21

*No adversary proceedings filed prior to fiscal year 1980.
**Data for the year ended June 30.

ATTACHMENT 2

JUDICIAL AUTOMATION COSTS*
FIVE YEAR PLAN

COST CENTER/YEAR	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	TOTAL**
COURTS OF APPEALS AND DISTRICT COURTS:						
ACTIVITY: DATA PROCESSING						
Courtran	$3,078	$2,525	$1,611	$1,611	$800	$9,625
District Court Automation	724	2,046	2,152	2,152	2,152	9,226
Access to Law Enforcement	115	115	175	225	275	905
Automated Jury Selection	275	575	425	425	425	2,125
Computer Assisted Legal Research	1,200	1,200	1,200	1,200	1,200	6,000
Telecommunications Cost Reduction	239	239	239	239	239	1,195
Appellate Information Mgmt System	...	569	626	614	246	2,055
LA/DC Financial System	106	106	106	106	106	530
Probation Information Mgmt System	...	....	215	2,000	2,000	4,215
Subtotal Data Processing	5,737	7,375	6,749	8,572	7,443	35,876
ACTIVITY: OFFICE AUTOMATION						
Electronic Mail	177	539	973	973	973	3,635
Word Processing Systems	4,124	4,124	4,124	4,124	4,124	20,620
Subtotal Office Automation	4,301	4,663	5,097	5,097	5,097	24,255
Subtotal Judicial Automation	10,038	12,038	11,846	13,669	12,540	60,131
Nonrecurring Expenses	...	(1,064)	...	...	...	(1,064)
Field Automation Manpower Requirements	...	...	1,508	3,016	3,557	8,081
Total Appeals/District Courts	$10,038	$10,974	$13,354	$16,685	$16,097	$67,148
BANKRUPTCY COURTS:						
Bankruptcy Court Automation (equipment, communications)	562	390	690	990	1,590	4,222
ADMINISTRATIVE OFFICE:						
Field Support Operations (manpower, equipment, travel, communications)	5,327	4,986	6,136	6,136	6,136	28,721
GRAND TOTAL	$15,927	$16,350	$20,180	$23,811	$23,823	$100,091

* Exclusive of the Federal Judicial Center

** Totals are for a five-year period only and do not include expenditures before FY 1984 nor preclude expenditures after FY 1988.

ATTACHMENT 3

Fiscal Year 1986
Lapses in Filling New Positions
(Dollars in thousands)

Appropriation	Number of Positions	Current Request	Revised Request*	Proposed Reduction
Courts of Appeals, District Courts, and Other Judicial Services:				
Salaries of Supporting Personnel				
Deputy Clerks, Courts of Appeals	53	$ 1,187	$ 712	$ 475
Deputy Clerks, District Courts	280	6,726	4,036	2,690
Probation Service	140	3,203	1,922	1,281
Pretrial Services	307	7,042	5,281*	1,761
National Court Library System	19	378	227	151
Deputy Clerks, Bankruptcy Courts	291	5,886	3,532	2,354
Subtotal	1,090	24,422	15,710	8,712
Expenses of Operation and Maintenance of the Courts				
Expenses relating to new personnel	...	6,781	4,714	2,067
Space and Facilities				
Expenses relating to new personnel	...	2,749	1,738	1,011
Total, Courts of Appeals, District Courts, and Other Judicial Services	1,090	33,952	22,162	11,790
Administrative Office of the United States Courts	44	2,001	1,641*	360
Grand total	1,134	$35,953	$23,803	$12,150

*The revised request is based on a lapse rate of 40 percent for all new positions with the exception of Pretrial Services and the Administrative Office which are based on a lapse rate of 25 percent.

BUDGET RESOLUTION

Chairman HATFIELD. Judge Clark, last night on the vote of 50 to 49, the Senate approved a crucial package on the budget, which incorporated a figure of about $975 million for the programs that you represent, which, as I add up the figures in your request here of $1,060,000, represents about an $85 million short-fall.

If, by some turn of events, the figure ended up in the final package from the Congress as a budget resolution for fiscal year 1986, how would this constraint be handled by your courts?

Judge CLARK. Since we heard of this, upon our arrival here yesterday to prepare for this hearing here today, we have contemplated several different possibilities. I would only say, Senator, that in my view, it would be disastrous to the work of the Federal courts. We have a tight budget. We have never presented a lax budget. I think your staff will verify that. We don't operate on the same principle, even, that executive agencies operate on.

The Congress gives us a task. That task is jurisdiction. They also give us special programs to augment that task. I am thinking now of the Pretrial Services Act just passed, which is now to be implemented, something that was not fully funded in our 1985 budget.

This cut is below what we operated on in 1985. If we are to perform the pretrial function that you have given us, if we are to exercise the full range of jurisdiction that Congress has placed in the courts, and you are the vehicle that identifies how much we have to do, we simply can't do it with these funds. We can't tell every second litigant or every third litigant or every fifth litigant, "We are sorry, we can't handle your case." That might be the most meritorious case that we get that year.

By the same token, we can't close the courthouse doors at 3:30 in the afternoon, and we can't refuse to accept filings when they are tendered to us. So, it really does place us in an almost impossible situation to know how to discharge the task you have given us if you don't give us the funds to do it.

This severe a cut, as I say, would simply be disastrous. We are an independent branch of the Government. I don't know. The traditional saying is, "we have no power of the purse." That is your power. As it should be, under the constitutional separation of powers.

But all I can say is that we have been unable to fathom any way that we can satisfactorily operate the courts on a reduced budget. We conceded over $16 million because we knew that this was an extremely tight fiscal year. We have agreed to bring on new personnel at a reduced rate. In connection with the 85 new judgeships that were established last year by Congress, only part of the expenses were funded in the 1985 budget, because we planned that the appointments of those judges would be delayed. So, we didn't ask for funds for all 85 judgeships in 1985. But they are going to be there in the 1986 fiscal year.

So, if we are cut back below 1985, we don't have the money to bring these judges aboard, to house them, to staff them, and to pay them unless we take it from somewhere else, and we are going to have to fire people if we do that.

I don't mean to be melodramatic about it, but I just don't know the answer. Judge Peckham, the Deputy Director of the Administrative Office, and the staff, and myself have struggled with this since we heard about it, and we have been unable to come up with any satisfactory solution or recommendations.

Chairman HATFIELD. I sense, then, you are protesting this cut.

Judge CLARK. It would be unsatisfactory, yes, sir. I think I have conveyed my feelings adequately.

IMPACT OF LEGISLATION

Chairman HATFIELD. Senator Rudman, do you have a question you wish to ask? We will have other questions, but I will defer to Senator Rudman.

Senator RUDMAN. I was just going to say, Mr. Chairman, that it seems that when OMB develops these budgets they don't always reflect the view of the highest member of the administration, the President. I have to believe that, because you can't on the one hand be talking about passing the new Crime Control Act, which was the No. 1 priority last year; doing all of these things which will impose all these burdens on the judiciaries, and then on the other hand be saying you can't have the money to do the job. I think there will be very little support for this proposal. I won't support it.

Chairman HATFIELD. I wouldn't want to destroy in any way or tarnish the image the Senator has expressed here of the way the White House and the executive branch of Government functions. But I would only indicate by way of example how the congressional or legislative branch of the Government functions in this line. That is, we passed legislation mandating access to local schools for physically handicapped to deal with special education. We never funded it.

Senator RUDMAN. I am proud to say I wasn't here when that happened, Mr. Chairman.

Chairman HATFIELD. It does happen on occasions for the Congress to mandate something without an economic impact statement or even an economic impact understanding. I think we ought to require, as we do on environmental impacts; any policy that we establish, whether it is the judicial system or whether it is local governments or state governments or school districts, that an economic impact statement accompany the new legislation.

HABEAS CORPUS PETITIONS

Senator RUDMAN. I have just one brief question, really, for the witnesses, that has to do with habeas corpus petitions. As you know, there has been a lot of discussion about legislation here to try to quell that in some way. Have they continued to rise at the same rate? If you would rather answer for the record, you may.

Judge CLARK. I would rather answer for the record. My impression is that they have risen proportionately to other increases in filings, but I would like to submit the answer for the record, if I may.

[The response follows:]

HABEAS CORPUS PETITIONS

In 1984 habeas corpus petitions filed in U.S. district Courts by both Federal and State prisoners dropped slightly by comparison with 1983. The actual drop in Federal habeas corpus filings was half a percent while State habeas corpus filings declined by 2.1 percent. Despite the drop in habeas corpus filings, overall prisoner petitions filed in U.S. District Courts have continued to increase. This has been due primarily to a continuing rise in State prisoner civil rights suits.

In a study made by the Bureau of Justice Statistics for the years 1961 through 1982, the number of State habeas corpus filings does not appear to be dependent on the number of State prisoners. In 1982 the number of habeas corpus filings by State prisoners in U.S. District Courts was 2.1 percent of the State prisoner population. This was the lowest percentage since the year 1964. In fact for each year beginning with 1971 there has been a reduction in habeas corpus petitions as a percentage of total prison population.

Senator RUDMAN. Does your group essentially support Senator Thurmond's bill, which does put some limitations on habeas corpus writs? Has there been a position reached on that by the Conference?

Mr. SPANIOL. I do not recall specifically, but I believe the Conference is considering legislation of this type.

Senator RUDMAN. The requirement is they be filed a year after the state remedies in court have been exhausted. My only other question, Mr. Chairman, I will ask Judge Clark, who has appeared before us a number of times. He could answer off the record personally to me. I was curious about your statement to the record that the Federal judiciary operated on a different principle than executive agencies of the Government. Could you tell me what the principle is that the executive agencies operate under; I would really like to know that. [Laughter.]

Chairman HATFIELD. If you wish to plead the Fifth Amendment, we will consider that, too. [Laughter.]

Senator RUDMAN. Mr. Chairman, thank you. I have to leave for another meeting.

Judge CLARK. Good to see you, Senator.

Senator RUDMAN. Good to see you.

JUDGES' PAY RAISE

Chairman HATFIELD. Let's talk about an equally important part of this budget, the judges' pay raise. Would you like to talk about that?

Judge CLARK. It is very near to my heart. [Laughter.]

Chairman HATFIELD. Judge Clark, as you know, the Continuing Resolution of 1981 provided for the affirmative act on the part of the Congress as a requirement to raise the salaries of the Federal judges. In your supplemental for fiscal 1985, there was a request for a pay raise of 3.5 percent for the Federal judges. Now I am really asking a kind of a legal question. The appropriations of these funds, in and of themselves, that act of appropriation does not, in itself, constitute approval of the pay raise, does it?

Judge CLARK. No, sir. We don't take that position.

Chairman HATFIELD. I see. So that in other words, authorizing legislation would be required by the authorizing committee.

Judge CLARK. We don't know that. That would take us a little far, Senator. It is our position——

Chairman HATFIELD. Or we must authorize on the appropriation bill?

Judge CLARK. That, we think can be done. Section 140, which is the section of the previous, was it——

Mr. SPANIOL. Joint Resolution.

Judge CLARK. That section of that joint resolution that said members of the judiciary do not share in the pay raises unless expressly authorized by Congress was, itself, a part of the appropriations process. It was part of the continuing resolution.

Chairman HATFIELD. We were already legislating on an appropriation at that point you are saying?

Judge CLARK. Yes, that is right.

Chairman HATFIELD. So in order to suspend that authorizing action we took in 1981, the expenditure from appropriated accounts of 3.5 percent would be required?

Judge CLARK. This essentially is what happened last year with regard to the 1984 pay increase.

Chairman HATFIELD. Do you have proposed language that would be legal?

Judge CLARK. We do, sir. Senator Mitchell offered an appropriation bill last year.

Chairman HATFIELD. Which I co-sponsored.

Judge CLARK. We would continue that same language this year, except to make it applicable January 1, 1985 the effective date of the 1985 pay raise. I have a copy of it somewhere among my papers.

Chairman HATFIELD. I am sure you must have. Judge Skopil assured me you would have.

This is the appropriate language. Do you consider this constitutional? [Laughter.]

Judge CLARK. Yes, sir. I would say that if this language is expressly included in the Appropriations Act and if the Congress adopts it, it would be an affirmative action by the Congress which would comply with Section 140. Section 140 would still remain, and in future legislation for the pay raises, it would again not automatically be granted to judges unless future action of this kind were taken, so Congress would still maintain the degree of control that Section 140 placed in it.

Chairman HATFIELD. Judge Peckham, do you concur or dissent?

Judge PECKHAM. I concur.

[Laughter.]

Chairman HATFIELD. It is the unanimous opinion of the court sitting here.

SUBMITTED QUESTIONS

Judge Clark, I have other questions that have been prepared by staff that I would like to submit to you for the record with the constraint of time I am under today, rather than make it a part of the testimony.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR LAXALT

QUESTION:

I understand you have recently upgraded the Office of Management Review within the Administrative Office of the U.S. Courts to the Office of Inspector General. The Committee certainly supports any efforts to ensure the absence of waste, fraud, and abuse within the Judicial Branch. However, in the past, the Congress has created Inspector General positions by statute — most recently in the Inspector General Act of 1978.

—Do you think it would be more appropriate for this office to be created by Congress, since Congress provides the funds for operation of the Judiciary?

—If creation of this office is more than just a title change, and involves a new program, project or activity, why was the Committee not notified in accordance with its statutory reprogramming procedures?

ANSWER:

—The Director of the Administrative Office believed that it was appropriate for the Office of the Inspector General to have been created administratively within the judiciary. While Congress has indeed created such offices in the past, most notably in the Inspector General Act of 1978, many Inspector General Offices in the federal structure have been created without legislative action. Indeed, the Inspector General Act contains no provision or implication suggesting the necessity of Congressional action to create such offices.

The Director stated that the Judicial Branch's constitutional independence, the history of Congressional support for the judiciary "policing itself" — most recently manifested in the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 — and the fact that he was exercising authority already congressionally conferred upon him by 28 U.S.C. 604 all indicated to him that the action was the "most appropriate" method of organizing the functions now vested in the Office of Inspector General. He also felt that it was appropriate to take the initiative in this area to avoid any public perception that Congressional initiative was necessary because the judiciary could not or would not otherwise have acted responsibly.

—The recent modification in responsibilities originally assigned by the Director to the Office of Management Review upon its creation in 1975, and the redesignation of that office as the Office of Inspector General, did not constitute the establishment of a new program, project or activity. No reprogramming of funds was involved. This clarification of activities performed by the Office of Management Review and the reassignment of duties performed by other entities within the Administrative Office to the Office of the Inspector General was intended to facilitate and enhance the Director's ability to exercise the authority and discharge the responsibilities originally vested in that office by the Administrative Office Act in 1939. This clarification of the mission statement for the Office of Inspector General reflects duties which were already being performed or authorized for the Office of Management Review or for other entities of the Administrative Office under the Director's existing authority under section 604, Title 28 of the United States Code. For these reasons, the Director did not believe that the notification procedures for reprogramming were applicable.

QUESTION:

You're requesting a program supplemental of approximately 26 million dollars associated with passage last year of the Bankruptcy Amendments and Federal Judgeship Act of 1984. That Act creates 85 new Article III judgeships. Based on the progress in filling these judgeships, has your estimate of needs changed?

ANSWER:

Based on the number of judgeships filled, plus the number of judgeship nominations and confirmations to date, the supplemental appropriation estimate appears to be on target.

QUESTION:

Last year, Congress denied funding for a portion of the Pretrial Services program due to our understanding of the Pretrial Services Act, which seems to mandate separate offices for the pretrial services function and the probation function. This year, you are requesting 297 additional probation officers, including those designated to perform pretrial services, while requesting no additional personnel for the Pretrial Services Program.

—Do you continue to believe probation officers can perform the pretrial services function?

—Have you discussed this issue with the Members of the House Judiciary Committee who believe separate offices are mandated by the Pretrial Services Act?

ANSWER:

Yes. Probation officers clearly have the statutory authority to provide pretrial services. The Pretrial Services Act authorizes the courts to choose between probation offices and separate pretrial services offices for delivery of the service as would best meet local needs.

Since the Act was signed into law September 27, 1982, the Chairman of the Judicial Conference Committee on the Administration of the Probation System and the Director of the Administrative Office of the United States Courts have testified at oversight hearings on the Pretrial Services Act in June 1983 and March 1984. An additional oversight hearing on implementation of the Act was scheduled before the House Subcommittee on Crime for September 6, 1984, but that hearing was cancelled. The prepared statement for that hearing was filed with the Subcommittee and subsequently endorsed by the Judicial Conference of the United States. In March 1985 the statement was introduced for the record at the hearing before the House Appropriations Subcommittee. Judge Tjoflat, Chairman of the Probation Committee, pointed out in the statement that, particularly in a small district court, the ability to provide pretrial services through existing probation offices has many advantages: there will be backup to provide services in periods of illness and vacation; there will be flexibility to interview defendants and prepare reports when several arrests occur simultaneously; and there will be the capacity to provide pretrial services as an additional probation officer duty when there are several widespread locations. The judge noted that to require a court to establish a separate office in order to get personnel creates a situation in which many districts can only obtain the resources necessary to do the job if they agree to a structural and managerial arrangement that is inefficient and a possible waste of taxpayer dollars.

QUESTION:

We recently received a reprogramming request for three temporary staff attorneys in the Eleventh Circuit, in excess of the statutory ratio of one attorney for each authorized judgeship. If we make an exception for that circuit, will we be opening the door to pandora's box?

ANSWER:

The Eleventh Circuit is the only regional circuit court of appeals which was not authorized additional judgeships by the Bankruptcy Amendments and Federal Judgeship Act of 1984. That court did not request any judgeships at the time others did because it had just been created as a circuit. At its September 1984 session, the Judicial Conference approved three additional judgeships for the Eleventh Circuit, but it will be some time before the Congress considers that request. The per judge case disposition rate of the Eleventh Circuit which was already among the highest in the nation, has continued to increase. In addition, approximately 50 death penalty cases are being filed each year in this circuit. These cases require a great commitment of time and effort by judges and staff. Additional staff attorney support would provide critical assistance with respect to these death penalty cases. It would also enable judges and staffs to stay abreast of the remaining heavy caseload. The three additional staff attorneys would be temporary. When additional judgeships are authorized, the number of staff attorneys will return to the one-to-one ratio. We believe there is no likelihood that any other circuit will experience this kind of requirement.

QUESTION:

In the past several years, you have requested funds for electronic sound recording equipment and personnel to replace court reporters. How is this program working, and have you begun to achieve savings due to the attrition of court reporters?

ANSWER:

In those few courts where Electronic Sound Recording (ESR) has been installed and functioning for more than a few months, i.e., Missouri (W), Alaska, Texas (W), Missouri (E), Pennsylvania (E), and Michigan (E), the program has been eminently successful. Some courts such as Maryland had technical and mechanical problems which initially inhibited the program, but with those problems resolved, ESR has proved very beneficial to the court. A letter from Judge Scott Wright, the first judge using the system in Missouri (W) follows.

To date, we have requests from 30 active and senior district judges to install a system, but only 19 courtrooms are fully operational, some for only a few months now. It sometimes requires several months to install a functioning system due to equipment delivery schedules and courtroom construction.

Transcripts are accurate and received on a timely basis, sometimes at less cost than those produced by official court reporters. Many times litigants purchase copies of the tapes, in lieu of transcript, at great savings to themselves.

Cost savings for these courts in operation have been reflected in three areas: positions for active judges actually cut from the payroll (5); positions for senior judges not requested by courts (4); and contractual cost savings which have not been determined with precision. For those courts not yet fully operational, the Administrative Office of the United States Courts expects to save 4 additional positions for active judges by attrition; another court reporter position which would normally be required for a senior judge should not be requested; contract savings for senior judges and magistrates should be significantly enhanced.

These positions are identified in the accompanying chart:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
811 GRAND AVENUE
KANSAS CITY, MISSOURI 64106

Chambers of
SCOTT O. WRIGHT
District Judge

January 9, 1985

Honorable A. David Mazzone
United States District Judge
Post Office and Courthouse Bldg.
Boston, Massachusetts 02109

Re: Court Reporter Study Committee

Dear Judge Mazzone:

Judge Elmo B. Hunter of our Court has referred to me a letter which you had written to him in regard to electronic transcription of court proceedings, and he has asked if I would write a letter to you regarding my experience with the use of this method of transcribing the proceedings.

I have been using electronic transcription for about one year. The first two months I used it as a backup with a regular stenotype court reporter as a primary reporter, but for the last nine months I have used the electronic transcription exclusively. I can assure you that it has exceeded my expectations. I am completely satisfied with it and I have not had any complaints from lawyers with the use of it in the courtroom or in the transcriptions that have been prepared for appeal. Not only do I have the courtroom wired electronically, but I have my conference room wired and I also have my telephone wired. I use the telephone for a number of my pre-trial conferences and, of course, they are all recorded. I record pre-trial conferences on the conference room recorder and also proceedings before trial and during trial out of the hearing of the jury. We have never had to stop the proceedings because of any breakdown in equipment and it has worked most satisfactorily.

I think the important key to the electronic transcription is that you need a competent person monitoring the equipment. They keep a log of all the witnesses and a log of the proceedings along with the spelling of difficult words. Both Judge Hunter and I have persons who operate our equipment and I have used both of them and they both are doing an exceptionally good job. I have placed further responsibility on the monitor of my equipment in that I have taken my Courtroom Deputy out of the courtroom, and she also keeps track of the exhibits and the swearing of the witnesses and the things that the Courtroom Deputy formerly did. This has the added benefit of freeing my Courtroom Deputy to be out of the courtroom and do the other things she is responsible for, and of course I have added some extra duties to the Courtroom Deputy because she does not have to be in the courtroom.

I am so sold on this method of transcribing court proceedings that I would never go back to the court reporter system. I think that any judge who tried this method would be equally as enthusiastic about it as I am. I realize that most judges are not going to discharge their court reporters and start using this equipment, but any judge who loses his court reporter through retirement or resignation should definitely be encouraged to give this equipment a trial because I believe they would be as satisfied with it as I am.

If there is any further information that I can give to you or that I can supply to you, I would be most happy to do so.

Yours very truly,

Scott O. Wright

Scott O. Wright
Chief Judge

	Court Reporter Positions Saved		Court Reporter Contract Funds Saved
	Active Judges	Senior Judges	
ACTUAL			
Missouri (W)	(1)		
Maryland		(1)	visiting judges senior judges
Pennsylvania (E)		(2)	
Texas (W)			senior judges
Alaska	(1)	(1)	
Missouri (E)	(1)		
Michigan (E)	(1)		
Mississippi (S)			visiting judges senior judges and magistrates
Louisiana (E)			senior judges and magistrates
Idaho	(1)		some for senior judges
POTENTIAL			
Ohio (S)			senior judges
Washington (W)	(1)		visiting judges and magistrates
Wisconsin (E)			senior judges
Pennsylvania (M)			senior judges
Hawaii		(1)	visiting judges
N. Mariana Islands	(1)		
Nevada	(1)		visiting judges and magistrates
Louisiana (W)	(1)		

QUESTION:

Last year, Congress passed the Deficit Reduction Act that directed OMB to propose rescissions in the publications, travel, and consulting budgets of Federal agencies. Although the Judiciary was exempt from this Act, have you looked at ways to achieve savings in 1985 and 1986?

ANSWER:

The Judicial Branch has and will continue to make every effort to achieve the more efficient use of Federal funds. With reference to those specific activities addressed in the Deficit Reduction Act of 1984, we do not expend any funds for public affairs or public relations. We are not directly engaged in any debt collection activities, except from the standpoint of civil actions that may be filed to enforce payment of such indebtedness. With reference to the operation of motor vehicles, we are not engaged in any procurement or leasing activities. We do acquire some automobiles on a reimbursable basis from GSA motor pools which are being used by probation officers incident to performing their investigatory and supervisory responsibilities. In this regard, most probation officers use personally-owned automobiles in conducting presentence investigations and supervising probationers and parolees, for which they are reimbursed on a mileage basis.

With regard to travel and transportation of personnel, we have reduced our expenditures by approximately $500,000 by taking advantage of reduced fares obtained pursuant to contractual agreements between the GSA and the airlines. Consultant services are being utilized on a very limited basis (less than $100,000) to assist the Judicial Conference Committee on Rules of Practice and Procedure and the respective advisory committees on appellate, bankruptcy, civil and criminal rules. We cannot demonstrate any savings in printing and reproduction as those costs generally increase in direct proportion to the increase in civil, criminal and bankruptcy case filings. Likewise, the cost of printing opinions has increased by reason of the increase in appeals.

To demonstrate our efforts to reduce expenditures, the following changes in policy and/or guidelines relating to the operation of the courts were recently adopted:

1. Restricted the number of supporting personnel that may accompany a judge on inter-circuit assignments.

2. Limited overlapping appointments of secretaries and law clerks.

3. Directed that the employment of additional temporary secretaries and law clerks by judges based on "judicial emergencies" be subject to the approval of the respective judicial councils.

4. Implemented procedures requiring certification by the judicial council for supporting personnel for senior judges based on actual workload.

5. Adopted standards and guidelines for the procurement of furniture and furnishings.

6. Established procedures requiring approval by the judicial council of "change orders" by the courts incident to the construction of new buildings and major renovation projects.

7. Issued guidelines for the installation of electronic sound recording systems, for the recording of proceedings in lieu of court reporters.

8. Mandated the adoption of management plans by the courts to foster effective utilization of court reporters.

9. Authorized, with the approval of the Appropriations committees, a pilot civil arbitration program.

10. Directed the conduct of space utilization surveys which resulted in the closing of some court facilities.

11. Adopted as a goal that all district courts limit the percentage of jurors not selected, serving, or challenged on voir dire or orientation day to 30 percent (down

BES AVAILABLE

from the percentage of jurors not selected, serving or challenged which currently is 36 percent).

12. Endorsed the experimental use of summary jury trials as a potentially effective means of promoting the fair and equitable settlement of potentially lengthy civil jury cases.

13. Adopted a 5-year plan for automation in the United States Courts.

Similarly, the budget for fiscal year 1986 reflects the administrative cost reductions of $4,435,000. In addition, we have conceded the sum of $12,150,000, which is a savings that will be realized by deferring the appointment of people to the new positions requested in the budget and by allocating those positions to the courts on a quarterly basis.

The courts have and will continue to address the matter of reducing expenditures without reducing the level of services being provided the litigants in civil, criminal and bankruptcy cases. The courts are basically a service organization and have virtually no control over the number of cases that are filed. Likewise, there is little if any control over the number of grand juries that are convened and/or jury trials being demanded by the parties in civil and criminal cases. The Congress recently authorized 85 additional judgeships, which will have a substantial impact on budgetary requirements. These new judges will have to be provided with supporting personnel, space and facilities, equipment, lawbooks, supplies, etc. Congress also has increased the rates of compensation being paid to court-appointed counsel under the Criminal Justice Act. The courts are not involved in programs or activities that can be deferred or curtailed and, therefore, it is virtually impossible to make reductions in personnel or administrative expenses without serious adverse effects on the services that are being provided to the bar and to the public.

QUESTION:

The Department of Justice is proposing to eliminate the United States Trustee program, in which trustees administer the disposition of assets in a bankruptcy case. If Congress accepts this proposal, will the courts assume this responsibility and, if so, what will it cost?

ANSWER:

The United States Trustee program was established by the 1978 Bankrutpcy Reform Act as a pilot program in 18 judicial districts. The duties of the United States Trustees are set forth at 28 U.S.C. Section 586 and in 11 U.S.C. Section 15101 et seq. Section 323 of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353) extended authority for the United States Trustee pilot program to September 30, 1986.

In the 71 non-United States Trustee pilot districts the Judicial Conference has authorized a stop-gap program using deputy clerks for estate administration. The estate administrator program, however, is not analogous to the United States Trustee program. The range of duties and responsibilities of the deputy clerks for estate administration, and the resources available to the estate administrator program, are substantially less than those of the United States Trustees. Without further statutory authority it is not possible for the courts to assume the full responsibilities of the United States Trustees.

If the Congress decides to eliminate the United States Trustee program, the courts are prepared to extend the stop-gap estate administrator program to the 18 pilot United States Trustees districts. To accomplish this end, it is estimated that $3,000,000 (including furniture and office space) will be required to create 39 additional deputy clerk positions for estate administration and 27 support staff in the 18 districts.

QUESTION:

We understand you are currently ahead of schedule placing contract guards on duty with 828 court security officers now on board compared with a target of 647. How was this achieved and what impact does this have on your funding requirements?

ANSWER:

The schedule for implementing the Court Security Officer (CSO) Program was accelerated because of the urgent requirements created by the General Services Administration's (GSA) curtailment of security across the country. With GSA guards being removed from most Federal buildings, the U.S. Marshals Service (USMS) felt it was more prudent to use the available funds to secure the perimeter of these facilities. This was accomplished at the expense of physical security system installations which are now behind in schedule. Unless the fiscal year 1985 supplemental request is approved, security systems will remain behind schedule until the end of fiscal year 1986.

QUESTION:

Are any of the court security officers being utilized in the courtrooms during civil or criminal trials and, if so, can we expect a corresponding reduction in Deputy U.S. Marshals?

ANSWER:

Court Security Officers, where sufficient numbers permit, may be used in low level proceedings which do not require the presence of Deputy U.S. Marshals under the terms of the Attorney General's Task Force Report. These CSOs are not replacements for Deputy U.S. Marshals. There should be no corresponding reduction for the USMS.

QUESTION:

On page 9.7 under item 4, you are requesting additional funding for copy equipment. What fees are being charged the litigants for copies of documents, and how much is being collected annually for deposit into the Treasury?

ANSWER:

The current fee for copies of documents is fifty cents per page. In fiscal year 1984, $3.9 million was collected in copy fees.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

1986 Increases

QUESTION:

Judge Clark, in your statement you state that approximately 40% of the $87,000,000 increase over fiscal year 1985 is to maintain current services. What accounts for that as inflation has been low and the 1985 pay raise only amounted to 3.5%.

ANSWER:

The amount budgeted to maintain current services is $34,635,000 which is only 3.5 percent over fiscal year 1985. This would amount to an increase of less than 2 percent if it did not include funds for the annualization of expenses associated with 85 newly created circuit and district judgeships, and to provide statutorily mandated "Defender Services" pursuant to the Criminal Justice Act (CJA) of 1964, as amended. With specific reference to Defender Services, the amounts budgeted include funds for projected increases in caseload as well as projected increases in the cost of providing CJA representation by Federal Defender organizations and private court-appointed attorneys.

QUESTION:

While I certainly understand that justice delayed is justice denied, how much would the Judiciary require if we just gave an increase for the new judges and froze everything else at the 1985 base level? Please supply, for the record, the specific amounts by account.

ANSWER:

The amounts included in the fiscal year 1985 program supplemental and in fiscal year 1986 to annualize expenses associated with the new judges are shown below.

Appropriation	1985 Supplemental	1986 Annualization	Total
Salaries of Judges	$ 3,098,000	$ 5,383,000	$ 8,481,000
Salaries of Supporting Personnel	5,548,000	11,113,000	16,661,000
Expenses of Operation and Maintenance of the Courts	13,526,000	-10,911,000	2,615,000
Space and Facilities	2,384,000	4,165,000	6,549,000
Court Security	1,492,000	-1,492,000	.....
Administrative Office of the United States Courts	86,000	205,000	291,000
Federal Judicial Center	51,000	155,000	206,000
Total	$26,185,000	$ 8,618,000	$34,803,000

The 1985 adjusted base by account excluding Supreme Court (including funds for new judges as indicated above) is as follows:

Appropriation	Adjusted Base
United States Court of Appeals for the Federal Circuit	$ 5,364,000
United States Court of International Trade	6,353,000
Salaries of Judges	104,826,000
Salaries of Supporting Personnel	486,791,000
Defender Services	68,578,000
Fees of Jurors and Commissioners	46,200,000
Expenses of Operation and Maintenance of the Courts	134,511,000
Bankruptcy	-9,628,000
Space and Facilities	149,100,000
Court Security	26,273,000
Administrative Office of the United States Courts	30,216,000
Federal Judicial Center	9,923,000

DEFENDER SERVICES

As indicated in your statement, the Crime Control Act of 1984 doubled both the hourly rates and compensation maximums payable to private attorneys representing indigent defendants.

QUESTION:

What were maximums per hour and per case before this new authorization was created, and what are they now?

ANSWER:

	Former Hourly Rate	New Hourly Rate
In-court hours	$30	$60
Out-of-court hours	$20	$40

	Former Case Limit	New Case Limit
Appeal, Felony	$1,000	$2,000
Misdemeanor	$ 400	$ 800
Other	$ 250	$ 500

QUESTION:

Are the new maximums now in effect?

ANSWER:

Yes.

QUESTION:

How do the amounts paid federal defenders compare to that received by attorneys in the legal services program?

ANSWER:

We do not know since we have had no occasion to undertake such a comparison because of the statutory scheme governing federal defender compensation. The Criminal Justice Act provides that salaries of federal public defenders and their staffs may not exceed those paid to personnel having similar qualifications and experience in the office of the United States Attorney in the district.

QUESTION:

Instead of doubling the maximums, could they not be phased in over several years?

ANSWER:

The rates and case compensation ceilings represent maximums authorized under the statute. These maximums had not been changed in over 14 years and are still viewed as less than adequate in many geographical areas. Private attorneys who staff this function on orders of the courts they serve are expected to serve at some personal sacrifice.

Senator BUMPERS. Good morning.

Judge CLARK. Good morning.

Chairman HATFIELD. We also will include the statements for the record from the Court of Appeals for the Federal Circuit, the Court of International Trade, the Administrative Office of the Courts, and the Federal Judicial Center. We also have a copy of a letter from Senator Heflin to be included in the record, as well as a letter from the Administrative Office of the U. S. Courts.

Senator Bumpers?

Senator BUMPERS. I don't have any questions, Mr. Chairman.

[The statements and communications follow:]

Court of International Trade

(Clerk's note: The following is testimony submitted for the record on behalf of the fiscal year 1986 budget request of the United States Court of International Trade.)

STATEMENT OF EDWARD D. RE
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE
before
The Subcommittee of the
Committee on Appropriations
United States Senate

May 1, 1985

Mr. Chairman, Members of the Committee:

It is a pleasure to appear before you again on behalf of the United States Court of International Trade.

The appropriation requested for fiscal year 1986 is $6,538,000, an increase of $370,000, or approximately 6%, over the adjusted $6,168,000 amount appropriated for fiscal year 1985.

Of the total increase, 50% is attributed to non-discretionary costs:

1. The sum of $33,000 is necessary to provide for within-grade increases.
2. The sum of $32,000 is necessary for the annualization of the pay raise granted in fiscal year 1985.
3. The sum of $94,000 is necessary for increased charges imposed by General Services Administra-

tion for the rental of space, pursuant to the Public Buildings Act of 1972.

4. The sum of $26,000 is necessary to provide for anticipated increases in expenditures for contract rates, charges for services, supplies, equipment, and law book continuations. This projection is based on an anticipated increase in expenditures at an estimated rate of 5%.
5. The balance of the requested increase, $185,000, is requested in anticipation of two of the three judges eligible taking senior status and continuing to function with assigned equipment, furniture and libraries. Of the requested $185,000, $144,000 will be non-recurring and $41,000 will be recurring.

I previously submitted the Court's "General Statement" and "Justification of Changes" which provide detailed descriptions of the line item adjustments. If the Committee requires more information we will be pleased to submit it, and, of course, I will answer any questions you may wish to ask.

Questions Submitted by Senator Laxalt
Court of International Trade

QUESTION:

In light of an apparent decline in your caseload, can positions be held vacant through attrition until such time as they are justified by your caseload?

ANSWER:

Yes. As the caseload is reduced, the court continues its policy of reducing unneeded supporting personnel positions. Since 1972 the court has reduced the number of supporting personnel from 136 to 101; and, intends to abolish unneeded personnel positions as they become vacant.

QUESTION:

How many senior judges does the court currently have and how many will be eligible to take senior status by the end of fiscal year 1986?

ANSWER:

At present, we have five senior judges and in fiscal year 1985 I have certified that two of the five performed substantial judicial services. By the end of fiscal year 1986, three of our current active judges will be eligible to take senior status.

United States Court of Appeals for the Federal Circuit

(Clerk's note: The following is testimony submitted for the record on behalf of the fiscal year 1986 budget request of the United States Court of Appeals for the Federal Circuit.)

STATEMENT
THE HONORABLE HOWARD THOMAS MARKEY

CHIEF JUDGE
THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

before the
SUBCOMMITTEE ON APPROPRIATIONS, UNITED STATES SENATE
1 May 1985

It is a pleasure once again to present this report Mr. Chairman. This is my thirteenth presentation to the Subcommittee, the third in which I have the honor of speaking for the Court of Appeals for the Federal Circuit.

We continue, of course, our past policies of close budget control and limitation of requests to those deemed absolutely necessary for mission accomplishment.

The court has been in operation for over 2 years. A major measure of our stewardship remains the average time interval between filing and disposition. I am happy to report that, despite a growing caseload, the court has continued to maintain that interval at 7 months.

Concerning our requests, the total of $5,720,000 includes $4,829,000 beyond our control. Of the items within our control, request an increase of $384,000 ($123,000 for 4 additional positions; $28,000 for inflation; $160,000 for updated work-processing equipment; $73,000 for equipment and furniture for a judge who is expected to take senior status).

Two of the four additional positions were created with the approval of the Congress on a temporary basis. Funding is requested to convert them to permanent status. The addition of a staff attorney and secretary has greatly increased productivity of our judges who are able to rely on them for handling our flood of motions, while freeing their personal staffs to concentrate on their opinions in cases. The other two positions constitute the staff of an active judge expected to take senior status during the fiscal year.

Updating our word-processing equipment is a prime need and represents the major segment of our request. Our present equipment has become obsolete. Technology changes over the intervening years have created the capability of setting up multiple work stations within each chambers, which will enable substantial increase in productivity. We plan to acquire this equipment under a 3-year lease-to-purchase agreement, under which we have the advantage of returning the equipment at no additional cost if we are not completely satisfied or if further technology changes make that step advisable.

Questions Submitted by Senator Laxalt
Court of Appeals for the Federal Circuit

QUESTION:

How many senior judges does the court currently have and how many are eligible for senior status by the end of fiscal year 1986?

ANSWER:

There are currently 3 active senior judges and there will be an additional 5 judges who will be eligible for senior status by the end of fiscal year 1986.

QUESTION:

Please provide for the record, the number of cases filed, pending, and terminated during fiscal year 1983 and 1984.

ANSWER:

The information follows:

U.S. Court of Appeals for the Federal Circuit
Appeals Filed, Terminated, and Pending
During the Twelve Month Period Ended September 30, 1983

Source of Appeal	Pending Oct. 1, 1982	Filed	Terminated									Pending Sept. 30, 1983
			Total	Withdrawn	Decided							
					Total	Affirmed		Reversed		Modified		
						Number	Percent[1]	Number	Percent[1]	Number	Percent[1]	
Total	263	930	600	183	417	331	79.4	45	10.8	41	9.8	593
Board of Contract Appeals	30	49	48	10	38	35	92.1	2	5.3	1	2.6	31
Court of International Trade	16	27	28	3	25	18	72.0	2	8.0	5	20.0	15
U.S. Claims Court	74	119	111	27	84	58	69.0	12	14.3	14	16.7	82
U.S. District Courts	-	216	66	33	33	22	66.7	3	9.1	8	24.2	150
International Trade Commission	6	5	5	1	4	2	50.0	1	25.0	1	25.0	6
Merit Systems Protection Board	77	335	181	62	119	113	95.0	3	2.5	3	2.5	231
Patent and Trademark Office	58	163	148	36	112	82	73.2	21	18.8	9	8.0	73
Secretary of Commerce	1	1	1	-	1	-	-	1	100.0	-	-	1
Writs[2]	1	15	12	11	1	1	100.0	-	-	-	-	4

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[1] Percents may not add up to 100.0 due to rounding.

[2] This category includes both writs of mandamus and other extraordinary writs.

U.S. Court of Appeals for the Federal Circuit
Appeals Filed, Terminated, and Pending
During the Twelve Month Period Ended September 30, 1984

			Terminated									
					Decided							
						Affirmed		Reversed		Modified		
Source of Appeal	Pending Oct. 1, 1983	Filed	Total	Withdrawn	Total	Number	Percent[1]	Number	Percent[1]	Number	Percent[1]	Pending Sept. 30, 1984
Total	593	1,288	1,001	264	737	590	80.1	78	10.6	69	9.4	880
Board of Contract Appeals	31	56	58	21	37	30	81.1	5	13.5	2	5.4	29
Court of International Trade	15	43	33	9	24	16	66.7	8	33.3	-	-	25
U.S. Claims Court	82	157	151	38	113	92	81.4	8	7.1	13	11.5	88
U.S. District Courts	150	208	193	50	143	85	59.4	18	12.6	40	28.0	165
International Trade Commission	6	5	7	1	6	5	83.3	-	-	1	16.7	4
Merit Systems Protection Board	231	661	415	113	302	276	91.4	20	6.6	6	2.0	477
Patent and Trademark Office	73	144	128	25	103	79	76.7	17	16.5	7	6.8	89
Secretary of Commerce	1	-	1	-	1	-	-	1	100.0	-	-	-
Writs[2]	4	14	15	7	8	7	87.5	1	12.5	-	-	3

[1] Percents may not add up to 100.0 due to rounding.

[2] This category includes both writs of mandamus and other extraordinary writs.

Administrative Office of the United States Courts

(Clerk's note: The following is testimony submitted for the record on behalf of the fiscal year 1986 budget request of the Administrative Office of the United States Courts.)

STATEMENT

OF

JOSEPH F. SPANIOL, JR.

DEPUTY DIRECTOR, ADMINISTRATIVE OFFICE
OF THE UNITED STATES COURTS

STATEMENT RELATING TO THE BUDGET FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM THE DEPUTY DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS. MR. FOLEY RETIRED AS DIRECTOR ON MARCH 1, 1985 AND TO DATE A SUCCESSOR HAS NOT BEEN NAMED. I APPRECIATE THIS OPPORTUNITY TO ADDRESS THE BUDGETARY REQUIREMENTS OF THE OFFICE FOR FISCAL YEAR 1986.

AS JUDGE CLARK INDICATED IN HIS PREPARED STATEMENT, WE ARE ALL COGNIZANT OF YOUR EFFORTS AND THE EXECUTIVE BRANCH TO EFFECT SAVINGS AND REDUCE THE FEDERAL BUDGET DEFICIT. WE HAVE REEVALUATED OUR NEEDS AT THE ADMINISTRATIVE OFFICE AND HAVE DETERMINED THAT WE CAN REDUCE OUR REQUEST BY NOT FILLING THE NEW POSITIONS REQUESTED AT OR NEAR THE BEGINNING OF THE FISCAL YEAR. WE ARE THEREFORE ABLE TO CONCEDE $360,000 WHICH MAKES THE BUDGET ESTIMATE FOR THE FISCAL YEAR 1986 $31,857,000. EXCLUDING ADJUSTMENTS TO THE BASE AND MANDATORY INCREASES, THE REVISED REQUEST REPRESENTS AN INCREASE OF $1,641,000, OR 6.0 PERCENT, OVER THE FISCAL YEAR 1985. THE REQUEST INCLUDES FORTY-FOUR ADDITIONAL POSITIONS FOR ALLOCATION TO THREE SPECIFIC ACTIVITIES OF OUR OFFICE.

THE FIRST IS A REQUEST FOR FOUR PERSONNEL SPECIALISTS TO AUDIT AND REVIEW POSITIONS IN THE COURTS TO INSURE COMPLIANCE WITH CLASSIFICATION STANDARDS AND GUIDELINES ADOPTED BY THE JUDICIAL CONFERENCE OF THE UNITED STATES. THE COURTS HAVE EXPERIENCED CONSIDERABLE GROWTH AND DIVERSITY IN THE NATURE OF FUNCTIONS BEING PERFORMED. IT IS ESSENTIAL THAT WE AUGMENT THE STAFF OF THE PERSONNEL DIVISION TO CONDUCT SITE AUDITS FOR THE PURPOSE OF VERIFYING THAT PERSONEL ARE BEING COMPENSATED COMMENSURATE WITH DUTIES AND RESPONSIBILITIES ASSIGNED.

TEN ADDITIONAL POSITIONS ARE REQUESTED FOR THE OFFICE OF MANAGEMENT REVIEW WHICH JUST RECENTLY WAS DESIGNATED AS THE OFFICE OF INSPECTOR GENERAL. THE REDESIGNATION OF THIS OFFICE DOES NOT AFFECT THE MANAGEMENT OR FINANCIAL AUDITS OF THE COURTS PERFORMED BY THIS OFFICE. HOWEVER, THE RESPONSIBILITIES OF THIS OFFICE HAVE BEEN EXPANDED TO INCLUDE THE REVIEW OF PROGRAMS AND ACTIVITIES OF THE JUDICIARY, SUCH AS THE DISTRICT COURT EXECUTIVE PROGRAM, AND THE REVIEW AND AUDIT OF THE OPERATIONS OF THE ADMINISTRATIVE OFFICE ITSELF AND THE FEDERAL JUDICIAL CENTER. IN ADDITION, THERE IS A NEED TO INCREASE THE FREQUENCY OF THE MANAGEMENT REVIEWS AND AUDITS OF CLERKS' OFFICES AND OTHER COURT OFFICES AND TO RESPOND TO THE INCREASING NUMBER OF REQUESTS FOR AUDITS FROM THE COURTS THEMSELVES. THE ADDITIONAL PERSONNEL REQUESTED WILL HELP TO ACHIEVE THESE AUDIT GOALS.

AT ITS SESSION IN SEPTEMBER, 1984 THE JUDICIAL CONFERENCE OF THE UNITED STATES CRITICIZED THE PACE OF AUTOMATION IN THE COURTS AS BEING INSUFFICIENT TO MEET THE PRESSING NEEDS OF THE COURTS. THE CONFERENCE DIRECTED THAT FUNDS AND PERSONNEL SHOULD BE REQUESTED "TO ENABLE THOSE IN THE ADMINISTRATIVE OFFICE AND THE FEDERAL JUDICIAL CENTER TO PROVIDE FULL AUTOMATION TO ALL COURTS MORE EXPEDITIOUSLY".

THE JUDICIARY'S FIVE-YEAR PLAN PROVIDES FOR PLACING SMALL, POWERFUL COMPUTERS IN THE COURTS TO PROVIDE FULL AUTOMATED

SERVICES. THE TASK OF PLACING SOPHISTICATED COMPUTERS IN THE COURTS, TRAINING COURT PERSONNEL TO OPERATE THEM, AND INTEGRATING THE VARIOUS AUTOMATED SYSTEMS INTO THE OPERATION OF THE COURTS AND PROVIDING BACKUP SUPPORT IS TIME-CONSUMING AND COMPLEX.

IN ORDER TO COMPLY WITH THE JUDICIAL CONFERENCE DIRECTIVE, MR. CHAIRMAN, WE REQUEST THAT THE SYSTEMS SERVICES DIVISION STAFF BE AUGMENTED WITH THIRTY ADDITIONAL POSITIONS. OF THESE THIRTY POSITIONS ELEVEN WOULD BE ASSIGNED TO THE COURTS SYSTEM BRANCH WHICH DEVELOPS SOFTWARE APPLICATIONS AND ASSISTS THE COURTS DIRECTLY IN PUTTING THESE APPLICATIONS INTO OPERATION. SPECIFICALLY THESE ELEVEN POSITIONS WOULD BE USED TO DEVELOP COMPUTER SOFTWARE TO CONVERT THE EXISTING CRIMINAL CASE PROCESSING SOFTWARE INTO A NEW FULL CRIMINAL DOCKETING SYSTEM, AND ALSO TO INTEGRATE THE NEW FINANCIAL ACCOUNTING SYSTEM WITH THE JURY SELECTION AND PAYMENT SYSTEM. THESE ADDITIONAL PERSONNEL WOULD ALSO GIVE SUPPORT ON A DAILY BASIS TO THE NEW CIVIL CASE MANAGEMENT SYSTEM, THE PROBATION INFORMATION MANAGEMENT SYSTEM, THE BANKRUPTCY COURT AUTOMATION PROJECT, AND THE APPELLATE INFORMATION MANAGEMENT SYSTEM AS THEIR DEVELOPMENT IS COMPLETED AND TRANSFERRED TO THE ADMINISTRATIVE OFFICE FROM THE FEDERAL JUDICIAL CENTER.

FIFTEEN OF THE THIRTY POSITIONS REQUESTED FOR AUTOMATION WOULD BE ASSIGNED TO THE OPERATIONS BRANCH WHICH ASSISTS THE USERS OF COMPUTERS IN MAKING FULL USE OF THE SYSTEMS APPLICATIONS AVAILABLE TO THE COURTS. THIS BRANCH ALSO HELPS THE COURTS COORDINATE THEIR INFORMATION TRANSMISSION REQUIREMENTS WITH TELECOMMUNICATION FACILITIES AS WELL AS HELP THEM MAINTAIN THEIR DATA BASE MANAGEMENT AND OPERATING SYSTEMS. THE STAFF OF THIS BRANCH ALSO PROVIDES TROUBLE SHOOTING ASSISTANCE TO THOSE COURTS WHICH HAVE BEEN AUTOMATED.

THE REMAINING FOUR POSITIONS WOULD BE ASSIGNED TO THE OFFICE SYSTEMS BRANCH TO CONDUCT OFFICE SYSTEMS STUDIES AND ASSIST THE

COURTS IN SELECTING AND INSTALLING APPROPRIATE WORD PROCESSING EQUIPMENT, ELECTRONIC MAIL, TELEPHONE AND DATA COMMUNICATION SERVICES.

MR. CHAIRMAN, A GREAT DEAL OF TIME, EFFORT, AND FUNDS HAVE ALREADY BEEN INVESTED IN THE DEVELOPMENT OF COMPUTER SYSTEMS TO BRING THE OPERATION OF THE COURTS INTO THE MODERN WORLD. THERE IS NOW LIGHT AT THE END OF THIS LONG TUNNEL. IT WOULD BE MOST UNECONOMICAL AND EVEN DEVASTATING NOT TO PROVIDE THE ADDITIONAL HELP NEEDED TO PUT DEVELOPED SYSTEMS INTO FULL OPERATION IN THE COURTS WITHIN THE NEXT FIVE YEARS.

FINALLY, MR. CHAIRMAN, WE REGRET TO REPORT THAT OUR EFFORTS TO CONSOLIDATE THE STAFF OF THE ADMINISTRATIVE OFFICE AT A SINGLE LOCATION HAVE, TO DATE, BEEN EXTREMELY FRUSTRATING. THE 99TH CONGRESS DID NOT ACT ON A PROSPECTUS AUTHORIZING OUR CONSOLIDATION, AND, ALTHOUGH A HEARING WAS HELD ON THE PROSPECTUS ON APRIL 3 IN THE HOUSE PUBLIC WORKS SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS, NO POSITIVE ACTION ON THE PROSPECTUS HAS BEEN FORTHCOMING AS YET. HOWEVER, OUR CURRENT SITUATION IS CRITICAL. THE HOUSING OF OUR AGENCY IN FIVE LOCATIONS AND THE PERSONNEL OF THE FEDERAL JUDICIAL CENTER IN THREE DIFFERENT SITES — BOTH RELATIVELY SMALL AGENCIES — IMPAIRS ON A DAILY BASIS OUR EFFICIENCY AND EFFECTIVENESS.

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU FOR ALLOWING US TO PRESENT THESE BUDGET REQUESTS FOR THE FISCAL YEAR 1986. EXPEDITING AUTOMATION IN THE FEDERAL JUDICIARY IS A MAJOR CONCERN AND WE HAVE BEEN GRATEFUL FOR THE SUPPORT GIVEN BY THE CONGRESS TO THESE EFFORTS IN THE PAST. NOW THAT WE ARE APPROACHING THE INSTALLATION PHASE OF THE PROGRAM WE ASK THAT THE RESOURCES TO BRING IT TO FRUITION BE PROVIDED.

Federal Judicial Center

(Clerk's note: The following is testimony submitted for the record on behalf of the fiscal year 1986 budget request of the Federal Judicial Center.)

STATEMENT OF
A. LEO LEVIN
DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. Chairman, it is my privilege as Director of the Federal Judicial Center to present for the record the Center's Fiscal Year 1986 appropriation request, as well as a request for a supplemental appropriation to our Fiscal Year 1985 budget. Both requests have been reviewed and approved unanimously by the Board of the Federal Judicial Center, which is chaired by the Chief Justice of the United States.

I turn first to our Fiscal Year 1986 request. The Federal Judicial Center is proposing no programmatic increases even though, as discussed below, our computer systems development responsibilities have increased substantially and we have been asked by the Judicial Conference of the United States to request additional resources for these programs. We are limiting our fiscal 1986 request to modest adjustments to our existing base budget so that we may maintain the current level of essential service to the federal judiciary.

We are mindful of our statutory mandate to provide the federal courts with necessary research, development, and continuing education services, but we are making every effort to minimize costs as we fulfill that mission. In that connection, the progress we are making to achieve the goals of the Five-Year Plan for Automation in the United States Courts may be of particular interest to the subcommittee.

As we have previously reported to you, the Five-Year Plan, developed with the approval of our Board and the full cooperation of the Administrative Office of the United States Courts, calls for the replacement of existing computer equipment which, quite literally, is rapidly nearing the end of its useful life. The Plan also calls for the enhancement and conversion of present computer software systems supporting the federal courts so that this software will operate on the replacement computer equipment, and the development of other automated systems to satisfy pressing judicial needs such as systems to support administrative and management operations of the bankruptcy courts and docketing systems to support appellate court operations. We are convinced, as are the courts, that such systems significantly improve court efficiency and effectiveness.

Because of that fact, automation plans for the judiciary are receiving very careful attention and guidance from federal judges. Not only has the Center Board examined and approved the specific plans of the Judicial Center, but the Judicial Conference of the United States has assigned to its Judicial Improvements Subcommittee responsibility for the general oversight of automation in the United States courts. Judicial members of that Subcommittee have invested a substantial amount of time examining all facets of the automation efforts of the Judicial Center and the Administrative Office, and they have conducted a detailed review of the Five-Year Plan for Automation in the United States Courts. As part of this review, many members of the subcommittee attended individual instruction sessions at the Judicial Center to acquaint themselves with technical concepts. Additionally, the Subcommittee heard extensive presentations concerning automation from court personnel as well as from the staffs of the Center and the Administrative Office.

As a result of their extensive review, the Subcommittee concluded that "...the present pace of implementation [of automation] of the Five-Year Plan is not rapid enough to meet the desires and needs of the courts." Further, the Subcommittee concluded that "[t]he need for speedier implementation can be met only by more adequate resources, that is, more money and more people for both development and implementation."

These conclusions, along with a number of other comments and recommendations, were transmitted for appropriate action to the Directors of the Judicial Center and the Administrative Office and, at the same time, they were forwarded to the parent Court Administration Committee for its consideration. The Court Administration Committee unanimously approved the Subcommittee report and in turn forwarded recommendations and an information report to the Judicial Conference for consideration at its September, 1984, meeting. The recommendations, which were subsequently approved by the Judicial Conference, were:

(1) That the Judicial Conference approve and direct the Directors of the Administrative Office and the Federal Judicial Center to seek additional resources, both money and personnel, to enable both the Administrative Office and the Federal Judicial Center more rapidly to provide full automation of all courts.

(2) That the Judicial Conference approve the assignment of a higher priority to the Bankruptcy Court Automation Project than to the Probation Information Management System.

We agree with the Judicial Conference's conclusion that the Center must apply additional resources to automated systems development to meet the pressing needs of the nationwide federal courts. We thought it appropriate to begin by reallocating existing resources to our Innovations and Systems Development Division and I am pleased to report that to date this program has allowed that division to comply with the directive of the Judicial Conference.

Further, I believe we can continue to reallocate existing resources in fiscal 1986 to meet the new challenges associated with automation. Thus, our fiscal 1986 budget request contains no programmatic increases.

Our reallocation has been accomplished in two ways. First, authorization was given to the Innovations and Systems Development Division to hire an additional twenty temporary technical employees. Funding for these temporary employees was obtained by rigorously examining every spending request and deferring or denying all that were not absolutely essential. In addition, we made every effort to operate more economically in every way we could. Second, after careful examination, four permanent positions were transferred from other Center divisions to the Innovations and Systems Development Division. We are hopeful that these actions will allow the Center to meet the demands of the Judicial Conference while, at the same time, avoiding the need to seek additional resources from the Congress.

I now turn to the specifics of our fiscal 1986 request. Our request for Fiscal Year 1986 is $9,923,000. This represents an increase of $452,000 over the amount expected to be available in Fiscal Year 1985 and, as previously mentioned, all of this increase results from uncontrollable adjustments to our base budget.

The majority of the request ($297,000) is necessitated by the effects of inflation and the increase in, for example, federal telecommunications user fees, the Center's mandatory contribution to Social Security, and within-grade salary advancements. The remainder of the request ($155,000) results from the annualization of our modest yet essential Fiscal Year 1985 supplemental request which I will now address.

Our fiscal 1985 supplemental of $51,000 is necessitated by the passage of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353 which, among other things, created 85 new federal judgeships, 24 in the United States courts of appeals and 61 in the United States district courts. These new judges and their permanent support staff will require substantial training, first for orientation and thereafter on a continuing basis, which we cannot reasonably provide with the resources presently available to our Continuing Education and Training Division. We have reason to believe that the training we provide is cost-effective in achieving greater judicial productivity without any sacrifice in the quality of justice. The amount requested will allow for the addition of two mid-level employees in our Continuing Education and Training Division and will also allow necessary travel to allow attendance of new judges at orientation training seminars, sentencing institutes, and annual circuit workshops.

I would be pleased to try to respond to any questions you might have concerning our appropriations requests or the work of the Judicial Center.

THE STATE JUSTICE INSTITUTE

(Clerk's note: The following is testimony submitted for the record on behalf of the fiscal year 1986 budget request of the State Justice Institute.)

STATEMENT OF THE CONFERENCE OF CHIEF JUSTICES

SUBMITTED BY W. WARD REYNOLDSON, PRESIDENT

Mr. Chairman and Members of the Subcommittee:

The Conference of Chief Justices appreciates this opportunity to express its support for the initial appropriation request for the State Justice Institute as authorized by Title II of Public Law 98-620, signed by the President on November 9, 1984.

I am W. Ward Reynoldson, Chief Justice of the Supreme Court of Iowa, and submit this statement in my role as President of the Conference of Chief Justices. The Conference is responsible for the budget submitted to you earlier and now appended to this statement. We trust it will be made part of the hearing record.

While we are responsible for the substance of the request it could not have been put in proper form without the expert assistance of Mr. Dewey Heising, Chief of the Financial Management Division of the Administrative Office of the United States Courts, and two members of his staff, Mr. Joseph Bobek, the deputy division chief, and Mr. Evan Tausch, budget analyst. We are deeply indebted to them and most grateful for their generous assistance.

The request is for $8,883,000. This is $4,117,000 below the authorized funding level of $13,000,000.

This hearing, Mr. Chairman, comes at the end of a seven-year effort led by the Conference of Chief Justices and the Conference of State Court Administrators to establish an appropriate and, we trust, mutually beneficial relationship, between state court systems and the federal government. We think the State Justice Institute Act is a development of major significance in the history of our federal system and are honored that you have invited us to discuss it with you.

Because this is an initial request, with no operating record to guide you or against which to measure the request we have made, I will relate it briefly to the budgets of existing agencies of comparable size and mission.

We are not in a position, of course, to cite specific programs, priorities, or objectives because these can only be set, under the Act, by the Institute's board of directors. That fact is a significant ingredient in the dilemma we face. The board cannot be named by the President until after the effective date of the Act which is October 1, 1985. But October 1 also is the beginning of the first fiscal year for which funding is authorized. Thus, the initial appropriation request must be made before the Institute is in existence or the Institute will lose one-third of its funding authority which only extends through Fiscal 1988.

That accounts for the extraordinary but necessary role we are playing, a role we feel obliged to fill because the Conference of Chief Justices, as the organization of the highest judicial officials of the states, territories, and the District of Columbia is, under the Act, the nominating authority for a majority of the members of the board of directors. We recognize that our relationship is distant and tenuous but it is the only relationship recognized by the Act between the Institute and an existing organization in a position to act on the problem at hand.

The budget submission was made directly to the House and Senate Appropriation Committees, with a copy to the Office of Management and Budget, because Congress established the Institute as an independent, non-profit corporation outside the executive branch. OMB's role, as with the budgets of the Legal Services Corporation and the federal judiciary, is limited to that of review and comment.

The amount requested will provide for the organization of the State Justice Institute and permit a substantial start on its program. It assumes the board of directors will hold its first meeting in October or November, develop and publish the necessary rules, regulations, guidelines and instructions, and that the first grants will be awarded in February or March. It follows that the staff positions, salaries, and other specific projections for the administrative budget are subject to revision, within the total allocated, by the board of directors. It also follows that certain of the administrative costs are one-time start-up expenditures and that staff will be phased-in over the first months of operation. Thus, the budget calls for 15 full-time permanent positions but a full-time equivalent employment of only 10.

The staff is small because the Act anticipates that the Institute's objectives will be met through grants to the courts and their support organizations as well as law schools, academic research institutions, and other organizations working in the field of judicial administration. The Institute will not conduct research or perform other substantive functions with in-house staff. This is in contrast to the Federal Judicial Center which is requesting 92 permanent positions and $9,631,000 for Fiscal 1986. This is because the FJC, the research, development, and training agency for the federal courts, is an operating agency that performs its research, training, and other support functions largely with in-house staff. On the other hand, the National Institute of Corrections, which serves state and local correctional systems in a manner similar to that contemplated for the courts by the State Justice Institute Act, had 30 permanent positions and a budget of $11,665,000 in Fiscal 1984, the last year for which we have data.

In briefly summarizing the Act, Mr. Chairman, it is important to remember that Congress established the State Justice Institute only after extensive consideration by the Judiciary Committees of both the House and Senate in the 96th, 97th, and 98th Congresses. The hearing record is extensive and deals in great detail with the peculiar mix of issues involving federalism, the separation of powers, and the various relationships between state and federal courts that make the State Justice Institute, in our view, a unique national agency to meet a unique national need.

We have described this legislation as "a landmark of major significance in the history of our justice system" and we still are of that view. It was designed to deal with a complex of issues that are indeed unique to an appropriate relationship between state court systems and the federal government. It recognizes as it must that state judiciaries play a fundamental role in what is, in the final analysis, a delicately balanced national judicial system involving both the state and federal courts. The importance of this fact, we believe, is attested to by the support the legislation received from the Chief Justice of the United States, the Judicial Conference of the United States, and the American Bar Association as well as many organizations of state judges, court administrators, and others concerned with the administration of justice.

Under P.L. 98-620 the State Justice Institute will be a private non-profit corporation charged with the task of improving the administration and operation of the courts of the states to assure each person ready access to a fair and effective system of justice. The emphasis obviously is on improvement of state courts but by recognizing the close relationship between the state and federal judiciaries the Act anticipates cooperative programs to improve the effectiveness of each system.

The non-profit structure was chosen to assure the Institute's independence in keeping with the separation of powers doctrine. It will be governed by an 11-member board of directors, six of whom must be state judges and one a state court administrator appointed by the President from a panel of nominees submitted to him by the Conference of Chief Justices following consultation with other interested organizations. Four public members will be appointed directly by the President. All board appointments will be subject to confirmation by the Senate. The board will have complete control over operations of the Institute including the selection and tenure of the executive director, and sign-off authority on all grants, contracts, and cooperative agreements.

The Institute has broad authority to fund research, technical assistance, demonstration, clearinghouse, education, training and related activities to improve the administration of justice. Funding is specifically authorized for 15 categories of programs which recognize the relationship between the diverse civil and criminal caseloads of the courts and the need to improve the judicial system as an integrated whole. These categories are set forth in Section 206 (c) of the Act which also is appended to this statement.

The Act specifically provides that the Institute shall not be considered a department, agency, or instrumentality of the federal government and that its officers and employees, except for certain employee benefits, shall not be considered officers or employees of the United States. The Institute is covered by the Freedom of Information Act and must meet generally accepted federal standards for the auditing of its own accounts as well as the monitoring and evaluation of programs supported by it. In addition to annual audits by an independent certified public accountant the financial transactions of the Institute may be audited by the General Accounting Office with reports and recommendations going from the Comptroller General of the United States to Congress and the Attorney General. The Attorney General, in consultation with the Federal Judicial Center, also will report to Congress on the work and effectiveness of the Institute.

State courts receiving funds from the Institute must provide a 50 percent match but awards to non-profit organizations may be up to 100 percent. The Act specifically forbids use of Institute funds to supplant existing state or local funding or court programs or services and there are strong prohibitions on any type of lobbying activity by the Institute or its grantees at the national, state, or local levels of govenment.

The above outlines the Act, Mr. Chairman, but it does not do justice to the long history of this legislation or explain the need and rationale for it. Because this is the initial budget request and there is no track record by which you can judge the work of the Institute, it may be helpful to provide for the record, at least, a very brief history of the events that bring us here today.

The origins of the State Justice Institute can be found in the Omnibus Crime Control and Safe Streets Act of 1968 which established, as you know, a massive federal grant-in-aid program to assist state and local governments in what was then called a war on crime. It is necessary to note that this war on crime was conceived without imput from state courts or any reference to them in the Act. Crime was viewed as a matter for police and prosecutors and administration of the program was placed in the Department of Justice at the national level and in executive branch planning agencies appointed by the governor at the state level. Because the Act did not mention courts this vital component of the criminal justice process received little of the federal assistance that was going in large amounts to other parts of the system. In fact courts in many states found themselves falling further behind under a federal program that strengthened the police, prosecution, and correction functions of the executive branch while often ignoring the increased pressures these programs brought on the courts.

The judiciaries complaints were stated in a series of resolutions adopted by the Conference of Chief Justices beginning in 1974. In general, these resolutions made the point that federal funding for state court programs presented a special set of issues that should be dealt with outside the framework of support for the executive branch components of the criminal justice system. In particular, they protested control by executive branch agencies at both the state and federal levels of funds allocated to judicial projects; restrictions which denied funding to programs that necessarily involved the civil as well as the criminal functions of the courts; and the small percentage of block grant funds going to court programs.

The civil-criminal issue was as vexing as the separation-of-powers problem. Most courts, of course, perform their civil and criminal functions so as to make separation impossible. Yet they were expected to make such a separation if they were to receive funding in many states. This problem, along with others associated with the earlier legislation, is still with us under the formula grant program of the recently enacted Justice Assistance Act.

These and related issues of concern to state judiciaries were discussed at a series of hearings in the late 1970s conducted by subcommittees of both the House and Senate Judiciary Committees. But they were never completely resolved even though Congress amended the Safe Streets Act in 1976 to encourage the funding of court programs and to give the judicial branch of state government a role in administering the Act at the state and local levels. Unfortunately these so-called "judicial amendments" were in effect for only a short time before funds for the program were eliminated in Fiscal 1981 and the agency was phased out of existence.

In the meantime the Conference of Chief Justices and the Conference of State Court Administrators appointed a Task Force in 1978 to study the issues raised by the Safe Streets Act and to "recommend innovative changes in the relations between state courts and the federal government."

The Task Force made its report in 1979. After reviewing the experience of state courts under the Safe Streets Act and analyzing the important role they play in the adjudication of federal as well as state law questions, the Task Force proposed creation of the State Justice Institute in much its present form. The report stressed the necessity for quality in state adjudications if state courts are to retain their historic place in our dual judicial system and this system is to meet the needs of the future.

I cannot speak, of course, for a still unappointed board of directors and give you a detailed account of how the Institute will proceed in the first year on the immense task it faces. All I can say is that the resources, at best, will be very limited when measured against what we know to be the need. If it is to use these resources in the most cost-effective manner, the Institute must concentrate on problems common to many or all state court systems. It also must face the fact that the problem of delay, intertwined as it is with the high cost of litigation, remains a basic issue to be addressed if our justice system is indeed to dispense justice. Virtually every issue facing the courts, both state and federal, can be approached in the context of the cost and delay problems and I feel certain they will be addressed.

There is, in short, no end to the work that must be done if state courts are to dispense the quality of justice our proud and complex democracy needs and demands. The State Justice Institute has been designed to play an indispensable role in our continuing quest for that high quality of justice. I speak for all my colleagues on the state bench when I ask you to give the Institute a chance to begin work on the many problems we face.

Thank you again for the opportunity to present our views. I will be pleased to respond to any questions you may have.

AVAILABLE

STATE JUSTICE INSTITUTE
First Year Operating Budget

Personnel:		
[illegible]		
Interim Director @ $68,700 (4 mos.)	$22,900	
Director @ $68,700 (8 mos.)	45,800	
Administrative Assistant @ $26,000 (8 mos.)	17,350	
Secretary @ $24,000 (11 mos.)	22,000	
Subtotal		$108,050
Program Division		
Deputy Director @ $60,000 (6 mos.)	$30,000	
Secretary @ $22,000 (6 mos.)	11,000	
Director of Education @ $50,000 (6 mos.)	25,000	
Secretary, Education @ $20,000 (6 mos.)	10,000	
Director of Research @ $50,000 (6 mos.)	25,000	
Secretary, Research @ $20,000 (6 mos.)	10,000	
Director of State Programs @ $50,000 (6 mos.)	25,000	
Secretary, State Programs @ $20,000 (6 mos.)	10,000	
Subtotal		146,000
Administration and Finance		
Director @ [illegible] (12 mos.)	$41,570	
Accountant @ [illegible] (12 mos.)	29,200	
Administrative Assistant @ $25,000 (8 mos.)	16,670	
Secretary @ $20,000 (10 mos.)	16,670	
Subtotal		104,110
Total Personnel		$358,160
Personnel Benefits @ 17%		60,740
Recruitment and Relocation (3 @ $10,000)		30,000
Staff Travel:		
Director's Office: 10 @ $900	$ 9,000	
Deputy Director: 6 @ $900	5,400	
Education: 5 @ $900	4,500	
Research: 5 @ $900	4,500	
State Programs: 5 @ $900	4,500	
Administration and Finance: 4 @ $900	3,600	
Subtotal		31,500
Board of Directors (4 meetings @ $10,000)		40,000
Audit Fees		25,000
Legal Fees		25,000
Evaluation		25,000
Office Space Rental (200 sq. ft./staff (15) @ $25)		75,000
Furniture and Fixtures (15 @ $2,500)		37,500
Computer System/Word Processing		60,000
General and Administrative (15 @ $5,000)		75,000
Total, Administration (First Year)		$ 883,000
(Second and Succeeding Years)		(898,000)
Total, Programs/Grants		8,000,000
GRAND TOTAL, FIRST YEAR		$8,883,000

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INDEPENDENT AGENCIES

STATE JUSTICE INSTITUTE

Identification code		1986 actual	1986 estimate	1986 estimate
Budget Appendix page	Heading	Request Pending	Proposed Amendment	Revised Request
	State Justice Institute.... For necessary expenses of the State Justice Institute, as authorized by Public Law 98-620.	.....	$8,883,000	$8,883 000

INDEPENDENT AGENCIES

STATE JUSTICE INSTITUTE

This request is the initial budget submission for the State Justice Institute, authorized by Title II of Public Law 98-620, signed by the President on November 9, 1984. Congress established the State Justice Institute as a private non-profit corporation to further improvement in the administration and operation of the courts of the States and thus assure each person ready access to a fair and effective system of justice.

The Institute will be governed by an 11-member board of directors and will operate with a small administrative staff, with its objectives being met through grants to State courts, their support organizations, law schools, and other organizations working in the field of judicial administration. The Institute has broad authority to fund research, technical assistance, demonstration, clearinghouse, education, training, and related activities to improve the administration of justice.

INDEPENDENT AGENCIES

STATE JUSTICE INSTITUTE

Program and Financing (in thousands of dollars)

Identification code **-****-8-1-752	19 86 actual	19 86 estimate	19 86 estimate
	Request pending	Proposed amendment	Revised request
Program by activities:			
00.01 General administration..........	$.....	$ 883,000	$ 883.00
00.02 Grants..........................	.....	8,000,000	8,000,00
10.00 Total obligations............	.....	8,883,000	8,883,00
Financing:			
40.00 Budget authority................	.....	8 883,000	8,983,00
Relation of obligations ot outlays:			
71.00 Obligations incurred, net.......	.....	8,883,000	8,883,00
72.40 Obligated balance, start of year......................	.....	.....	.....
74.40 Obligated balance, end of year......................	.....	.....	.....
90.00 Outlays, excluding pay raise supplemental............	.....	8,883,000	8,883,00

INDEPENDENT AGENCIES

STATE JUSTICE INSTITUTE

Object Classification (in thousands of dollars)

Identification code **-****-8-1-752	19 86 actual	19 86 estimate	19 86 estimate
	Request pending	Proposed amendment	Revised request
11.1 Personnel compensation: Full-time permanent positions...	.....	358	358
12.1 Personnel benefits: Civilian.....	.....	103	103
21.0 Travel and transportation of persons....................	.....	78	78
22.0 Transportation of things..........	.....	14	14
23.1 Standard level user charges.......	.....	75	75
23.2 Communications, utilities, and other rent.................	.....	12	12
24.0 Printing and reproduction.........	.....	6	6
25.0 Other services....................	.....	88	88
26.0 Supplies and materials............	.....	12	12
31.0 Equipment.........................	.....	137	137
41.0 Grants, subsidies, and contributions..................	.....	8,000	8,000
99.9 Total obligations.................	.....	8 883	8,883
Personnel Summary			
Total number of full-time permanent positions............................	.....	15	15
Total compensable workyears: Full-time equivalent employment.......	....	10	10

INDEPENDENT AGENCIES

STATE JUSTICE INSTITUTE

SUPPLEMENTARY SOURCE DOCUMENT (In thousands of dollars)

Identification code **-****-8-1-752	Function	Line No.	Def. (D) Indef. (I)	Leg. (S) No leg. (N)	1984 actual	1985 estimate	1986 estimate
A. ANALYSIS OF BUDGET AUTHORITY AND OUTLAYS							
Budget authority	752	40.00	D	N	.....	.....	8,883
Total					.....	.....	8,883
Outlays	752	90.00			.....	.....	8,883
Total					.....	.....	8,883
Memorandum entries:							
Appropriation to liquidate contract authority							
Limitations:		9					
		9					
		9					
		9					

Identification code **-****-8-1-752	1984 actual	1985 estimate	19 86 estimate

B. DISTRIBUTION OF OUTLAYS

	Line code			
From new authority—current	311	.....	.....	8,893
From new authority—permanent	312			
From obligated balances	313	.....	.....	.....
From unobligated balances	314			
From new appropriations to liquidate contract authority (memo entry)	315	( )	( )	( )

C. CHARACTER CLASSIFICATION

	Function	MC	Character code			
Budget authority	752	1	3600-04	.....	.....	8,883
		1				
		1				
		1				
		1				
		1				
		1				
Total				.....	.....	8.883
Outlays	752	2	3600-04	.....	.....	8 883
		2				
		2				
		2				
		2				
		2				
		2				
Total				.....	.....	8 883

APPENDIX "A"

TITLE II

SHORT TITLE

SEC. 201. This title may be cited as the "State Justice Institute Act of 1984".

DEFINITIONS

SEC. 202. As used in this title, the term—

(1) "Board" means the Board of Directors of the Institute;

(2) "Director" means the Executive Director of the Institute;

(3) "Governor" means the Chief Executive Officer of a State;

(4) "Institute" means the State Justice Institute;

(5) "recipient" means any grantee, contractor, or recipient of financial assistance under this title;

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this title, a constitutionally or legislatively established judicial council acts in place of that court.

ESTABLISHMENT OF INSTITUTE; DUTIES

SEC. 203. (a) There is established a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in any State pursuant to section 204(a)(6) of this title. To the extent consistent with the provisions of this title, the Institute may exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this title;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(4) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, reponsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) The Institute shall maintain its principal offices in the State in which it is incorporated and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 (26 U.S.C. 170(c)(2)(B)) and as an organizaton described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) which is exempt form taxation under section 501(a) of such Code (26 U.S.C. 501(a)). If such treatments are conferred in accordance with the provisions of such Code, the Institute, and programs assisted by the Institute, shall be subject to all provisions of such Code relevant to the conduct of organizations exempt from taxation.

(f) The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this title, and it shall publish in the Federal Register, at least thirty days prior to their effective date, all rules, regulations, guidelines, and instructions.

BOARD OF DIRECTORS

SEC. 204. (a)(1) The Institute shall be supervised by a Board of Directors consisting of eleven voting members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four members from the public sector, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted to the President by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the Conference considers best qualified [illegible] term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this title.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after the effective date of this title. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

(6) The initial members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b)(1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its [illegible]

AVAILABLE

(h) A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) All meetings of the Board, any executive committee of the Board, and any council established in connection with this title, shall be open and subject to the requirements and provisions of section 552b of title 5, United States Code, relating to open meetings.

(k) In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish policies and develop such programs for the Institute that will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 206(a).

OFFICERS AND EMPLOYEES

Sec. 205. (a)(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this title.

(b) Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5, United States Code.

(c)(1) Except as otherwise specifically provided in this title, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This title does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(d)(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5, United States Code: Subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance; and chapter 89 (relating to health insurance). The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5, United States Code, relating to freedom of information.

GRANTS AND CONTRACTS

Sec. 206. (a) The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b), in order to—

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this title, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this title;

(4) evaluate, when appropriate, the programs and projects carried out under this title to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this title;

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute shall give priority to grants, cooperative agreements, or contracts with—

(A) State and local courts and their agencies,

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.

(4) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;

(5) to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(6) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;

(7) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(8) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and effect the work of courts;

(9) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(10) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

(11) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(12) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives.

(13) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(14) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(15) to carry out such other programs, consistent with the purposes of this title, as may be deemed appropriate by the Institute.

(d) The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local judicial system is the recipient, the requirement that the recipient provide a match, from private or public sources, not less than 50 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this title to ensure that the provisions of this title, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this title, are carried out.

(f) The Institute shall provide for an independent study of the financial and technical assistance programs under this title.

LIMITATIONS ON GRANTS AND CONTRACTS

SEC. 207. (a) With respect to grants made and contracts or cooperative agreements entered into under this title, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation or constitutional amendment by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, or of any referendum, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this title of the recipient or the Institute;

(2) ensure all personnel engaged in grant, cooperative agreement or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity; and

(3) ensure that such recipient that files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

(A) the application for refunding has been approved and funds pursuant thereto received; or

(B) the application for refunding has been finally denied in accordance with section 9 of this title.

(b) No funds made available by the Institute under this title, either by grant, cooperative agreement, or contract, may be used to support or conduct training programs for the purpose of advocating particular training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) The authorization to enter into cooperative agreements, contracts or any other obligation under this title shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) To ensure that funds made available under this Act are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

RESTRICTIONS ON ACTIVITIES OF THE INSTITUTE

SEC. 208. (a) The Institute shall not—

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any State judicial system or allow financial assistance to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this title; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this title.

(b)(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall enure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum.

(c) Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

SPECIAL PROCEDURES

SEC. 209. The Institute shall prescribe procedures to ensure that—

(1) financial assistance under this title shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such actions should not be taken; and

(2) financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the recipient has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Institute to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Institute in accordance with procedures established in regulations promulgated by the Institute.

PRESIDENTIAL COORDINATION

SEC. 210. The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this title.

RECORDS AND REPORTS

SEC. 211. (a) The Institute is authorized to require such reports as it deems necessary from any recipient with respect to activities carried out pursuant to this title.

(b) The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement, or contract under this title and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) Copies of all records pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

AUDITS

SEC. 212. (a)(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, ac-

counts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(2) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b)(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31, United States Code.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c)(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

REPORT BY ATTORNEY GENERAL

SEC. 213. On October 1, 1987, the Attorney General, in consultation with the Federal Judicial Center, shall transmit to the Committees on the Judiciary of the Senate and the Houe of Representatives a report on the effectiveness of the Institute in carrying out the duties specified in section 203(b). Such report shall include an assessment of the cost effectiveness of the program as a whole and, to the extent practicable, of individual grants, an assessment of whether the restrictions and limitations specified in sections 207 and 208 have been respected, and such recommendations as the Attorney General, in consultation with the Federal Judicial Center, deems appropriate.

AMENDMENTS TO OTHER LAWS

SEC. 214. Section 620(b) of title 28, United States Code, is amended by—

(1) striking out "and" at the end of paragraph (3);

(2) striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) inserting the following new paragraph (5) at the end thereof:

"(5) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice.".

AUTHORIZATIONS

SEC. 215. There are authorized to be appropriated to carry out the purposes of this title, $13,000,000 for fiscal year 1986, $15,000,000 for fiscal year 1987, and $15,000,000 for fiscal year 1988.

EFFECTIVE DATE

SEC. 216. The provisions of this title shall take effect on October 1, 1984.

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

March 1, 1985

Honorable Paul Laxalt
Chairman
Subcommittee on Commerce, Justice,
State, the Judiciary & Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Paul:

The State Justice Institute Act was authorized as an independent agency as Title II of Public Law 98-620. The Institute is something that I have worked for since coming to the United States Senate. I think it is an important function that will provide benefits to many aspects of our state and local jurisdictions, and enhance and improve the concept of federalism in the United States.

I know of your support for this legislation and your interest in the National Judicial College in Reno, Nevada, which would benefit from the Institute's programs.

You soon should receive from the Conference of Chief Justices, the initial (fiscal 1986) appropriation request for the State Justice Institute. Public Law 98-620 requires that the submission be directly to Congress with the role of the Office of Management and Budget limited to that of review and comment.

The initial request is being made by the Conference because the effective date of the Act, October 1, 1985, coincides with the beginning of the first year of budget authority. Thus, it is necessary that the first budget be submitted before the Institute is in existence.

Given the necessity for an advance budget submission, the Conference of Chief Justices, composed of the highest judicial officers of the states and territories, is the logical organization to provide it because it has, as the nominating authority for a majority of the Institute's board of directors, a statutory role in administering the Act.

I am informed that the proposed budget, including first year start-up costs, will be for approximately $9 million, well below the budget authority of $13 million. This will permit a timely launching of the Institute's program, a program critically needed if state courts are to continue to fill the role assigned them in our ever expanding and ever more complex interrelated state-federal judicial system.

The State Justice Institute Act passed the Senate by unanimous consent and was supported by, among others, the Chief Justice of the United States, the Conference of Chief Justices, the American Bar Association and the Judicial Conference of the United States.

I urge the Subcommittee to act quickly and favorably on the appropriation requested for it.

Sincerely yours,

HOWELL HEFLIN

UNITED STATES SENTENCING COMMISSION

(Clerk's note: The following is testimony submitted for the record on behalf of the fiscal year 1986 budget request of the United States Sentencing Commission.)

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

April 17, 1985

Honorable Paul Laxalt
Chairman, Subcommittee on
Commerce, Justice, State,
and the Judiciary
Committee on Appropriations
S-146 Capitol Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am submitting for the consideration of your Committee a proposed supplemental for fiscal year 1985 to establish a new appropriation account entitled "United States Sentencing Commission, Salaries and Expenses" in the amount of $2,350,000.

Title II of Public Law 98-473, which was signed by the President on October 12, 1984, enacted the Comprehensive Crime Control Act of 1984. Chapter II of that Act created the United States Sentencing Commission as an independent commission. On April 15, 1985, the President signed Public Law 99-22, amending section 993 of title 28, United States Code. This amendment provides: "Before the appointment of the first Chairman, the Administrative Office of the United States Courts may make requests for appropriations for the Commission."

We have transmitted the supplemental request to the Office of Management and Budget and anticipate that it will be approved by the President and sent to the Congress shortly. I have enclosed a copy of the transmittal letter and accompanying material for your information. In addition, copies of the budget justification material are enclosed.

If you should have any questions regarding this request, please feel free to call me.

Sincerely,

Joseph F. Spaniol, Jr.
Deputy Director

Enclosures

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

April 17, 1985

Honorable David A. Stockman
Director, Office of Management and Budget
New Executive Office Building
17th and Pennsylvania Avenue, N.W.
Washington, D.C. 20503

Dear Mr. Stockman:

I am submitting for your consideration and transmittal to the Congress an emergency supplemental for fiscal year 1985 to provide $2,350,000 for a new account "United States Sentencing Commission, Salaries and Expenses."

As you know, Title II of Public Law 98-473, which was signed by the President on October 12, 1984, enacted the Comprehensive Crime Control Act of 1984. Chapter II of that Act created the United States Sentencing Commission as an independent commission. The purposes of the Commission are to establish sentencing guidelines for the United States district courts and other sentencing policies and practices for the Federal criminal justice system. The Commission was also charged with developing means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in new section 3553(a)(2) of title 18, United States Code, by section 212(a) of the Act.

Although the President has not yet appointed the Chairman and members of the Commission, I feel that it is imperative that an emergency supplemental be considered at this time in view of the time constraints placed on the Commission, such as the requirement to submit the initial sentencing guidelines to the Congress within 18 months from the date of enactment of this legislation. On April 15, 1985, the President signed Public Law 99-22, amending section 993 of title 28, United States Code, which permits the Administrative Office of the United States Courts to make requests for appropriations for the Commission before the appointment of the first Chairman. Although I am transmitting this request on behalf of the Commission, I do not presume to act for the Commission. I do hope, however, that this request will facilitate Congressional consideration of its funding at the earliest possible date so that the Commission can organize its program and get underway.

In preparing this supplemental, we have attempted to avoid any policy decisions in deference to the Commission's independent status. Rather, the enclosed documents reflect our understanding of the elements upon which the Congressional Budget Office based its estimate of the Commission's cost. That estimate is contained in the Senate Judiciary Committee's Report on S. 1762, the Comprehensive Crime Control Act of 1983 (S. Rept. No. 225, 98th Cong., 1st Sess. 417). This supplemental will provide for the start-up expenses of the Commission, as well as the estimated salaries and expenses of the Commission through the end of fiscal year 1985. It is assumed that once the Chairman has been appointed, a budget request for fiscal year 1986 will be submitted.

Enclosed are the prescribed schedules which support this supplemental request. An early transmittal to the Congress is requested in anticipation of the imminent appointment of Commission members.

With kind regards, I am,

Sincerely yours,

Joseph F. Spaniol, Jr

Joseph F. Spaniol, Jr.
Deputy Director

Enclosures

THE JUDICIARY

UNITED STATES SENTENCING COMMISSION
Salaries and Expenses

For the salaries and expenses necessary to carry out the provisions of Chapter 58 of Title 28, United States Code, $2,350,000, to remain available until expended.

Supplemental now requested, existing legislation

THE JUDICIARY

UNITED STATES SENTENCING COMMISSION
Salaries and Expenses
Program and financing (in thousands of dollars)

Identification code 10-****-1-1-752	19 84 actual	1985 estimate	19 86 estimate
Program by activities:			
10.0001 Total obligations.............	.....	2,350	.....
Financing:			
40.0001 Budget authority..............	.....	2,350	.....
Relation of obligations to outlays:			
71.0001 Obligations incurred, net.....	.....	2,350	.....
72.4001 Obligated balance, start of year....................	.....	.....	278
74.4001 Obligated balance, end of year....................	.....	-278	.....
90.0001 Outlays, excluding pay raise supplemental..........	.....	2,072	278

UNITED STATES SENTENCING COMMISSION

Salaries and Expenses

This supplemental appropriation would provide funds for the United States Sentencing Commission to carry out the provisions of the Comprehensive Crime Control Act of 1984. The purposes of the Commission are to establish sentencing policies and practices for the Federal criminal justice system and to develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in Section 3553(a)(2) of Title 18, United States Code.

Supplemental now requested, existing legislation

THE JUDICIARY

UNITED STATES SENTENCING COMMISSION
Salaries and Expenses
Object Classification (in thousands of dollars)

Identification code 10-****-1-1-752	19 84 actual	19 85 estimate	19 86 estimate
11.1 Personnel compensation: Full-time permanent positions	.....	564	.....
12.0 Personnel benefits	.....	68	.....
21.0 Travel and transportation of persons	.....	100	.....
23.1 Standard level user charges	.....	77	.....
23.2 Communications, utilities, and other rent	.....	10	.....
25.0 Other services	.....	1,300	.....
26.0 Supplies and materials	.....	9	.....
31.0 Equipment	.....	222	.....
99.0 Total obligations	.....	2,350	.....
Personnel Summary			
Total number of full-time permanent positions	.....	45	.....
Total compensable workyears: Full-time equivalent employment	.....	17	.....

UNITED STATES SENTENCING COMMISSION

Salaries and Expenses

Identification code 10-****-1-1-752	1984 actual	1985 estimate	1986 estimate

B. DISTRIBUTION OF OUTLAYS

	Line code			
From new authority–current	311	.....	2,072	.....
From new authority–permanent	312			
From obligated balances	313	.....	.....	278
From unobligated balances	314			
From new appropriations to liquidate contract authority (memo entry)	315	( )	( )	( )

C. CHARACTER CLASSIFICATION

	Function	MC	Character code			
Budget authority	752	1	3600-04	.....	2,350	.....
		1				
		1				
		1				
		1				
		1				
		1				
Total				.....	2,350	.....
Outlays	752	2	3600-04	.....	2,072	278
		2				
		2				
		2				
		2				
		2				
		2				
Total				.....	2,072	278

THE JUDICIARY

UNITED STATES SENTENCING COMMISSION

Salaries and Expenses

(Supplemental now requested, existing legislation)

SUPPLEMENTARY SOURCE DOCUMENT (In thousands of dollars)

Identification code 10-****-(-1-752	Function	Line No.	Def. (D) Indef. (I)	Leg. (S) Nonleg. (N)	1984 actual	1985 estimate	1986 estimate
A. ANALYSIS OF BUDGET AUTHORITY AND OUTLAYS							
Budget authority	752	40.00	D	N	.....	2,350	.....
Total					.....	2,350	.....
Outlays	752	90.00			.....	2,072	278
Total					.....	2,072	278
Memorandum entries:							
Appropriation to liquidate contract authority							
Limitations:		9					
		9					
		9					
		9					

SUBCOMMITTEE RECESS

Chairman HATFIELD. We will recess until May 8, when we will meet to receive additional testimony from the Legal Services Corporation. Thank you very much for your testimony.

Judge CLARK. Thank you.

[Whereupon, at 10:25 a.m., Wednesday, May 1, the subcommittee was recessed to reconvene May 8, 1985.]

BE AVAILABLE

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1986

TUESDAY, MAY 8, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:42 a.m., in room S-146, the Capitol, Hon. Warren Rudman presiding.

Present: Senators Rudman, Specter, Bumpers, and Lautenberg.

LEGAL SERVICES CORPORATION

STATEMENT OF CLARK DURANT, CHAIRMAN OF THE BOARD

ACCOMPANIED BY:
- TOM OPSUT, INTERIM PRESIDENT
- DAVID GESSNER, BUDGET OFFICER
- DENNIS DAUGHERTY, ACTING SECRETARY TO THE BOARD
- CHARLES WHITE, COMPTROLLER

INTRODUCTION OF WITNESSES

Senator RUDMAN. The Subcommittee will be in order. We thank you all for appearing here today. We felt that the constraints at the last hearing were such that it would be necessary to have you come back.

I am going to ask you first to identify everyone at the table for me, Mr. Chairman.

Mr. DURANT. I will. Sitting at my left is Dennis Daugherty of the Corporation.

Senator RUDMAN. Tell us what they do.

Mr. DURANT. Dennis is an Assistant to the Acting President, Tom Opsut; Tom Opsut is our Interim President; I am Chairman of the Board, Clark Durant. Sitting to my immediate right is David Gessner, our Budget Officer who handles all matters involving numbers and budget crunching and whatever; and Charles White, who is our Comptroller.

Senator RUDMAN. Let me simply tell you something that you might be interested in knowing. I am sure my colleague, Senator Lautenberg, would be interested, also. I was very interested in the nominees to the Corporation and have worked very hard to assure that they got confirmed. I have just been informed that at the markup a few minutes ago, all nominees were reported out: Bernstein by a vote of 10 to 6; all others unanimously.

I think that is progress. We have been trying to get this Board functioning effectively.

Let me also ask you one general question. Several days ago, I think it was last Friday to be precise, on the floor, Senator Gramm of Texas introduced an amendment to the budget resolution that would have transferred $300 million from Legal Services Corporation into certain other functions.

I opposed that; it was defeated by a vote of 71 to 27, which gives you some idea of the general score here.

Senator LAUTENBERG. I thought that was the vote that I lost on the proposition. [Laughter.]

Senator RUDMAN. You should have talked to me first. [Laughter.]

At any rate, Senator Gramm did introduce into the record a series of horror stories about things that have happened around the country involving the Legal Services Corporation. I think many of these stories, frankly, were quite old.

CORRESPONDENCE

But at any rate, I would like you to look at that record and address a letter to this committee as an answer for the record to indicate what has been done in the past to assure that some of these outrageous acts are not repeated, and where action has not been taken, what action you would propose to take.

[The information follows:]

Letter From Clark Durant

June 6, 1985

The Honorable Warren Rudman
530 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Rudman:

At the May 8, 1985, Appropriations Subcommittee hearing you requested that I address a letter to the Committee for the record to respond to examples of LSC grantees' use of funds that were mentioned by Senator Gramm during a recent floor debate on LSC funding. You specifically requested the letter "...indicate what has been done in the past to assure that some of these outrageous acts are not repeated and to the extent that action has not been taken on some of them, what action you would propose, Mr. Chairman, to do?"

Rather than comment on each of the numerous situations mentioned by Senator Gramm, I would like to respond with a few generalized statements of policy and then give some examples that demonstrate implementation of that policy.

First, I agree with you that the actions mentioned by Senator Gramm and the additional examples he inserted in the Congressional Record, part of a CATO monograph, were "outrageous" and were not a proper and wise use of taxpayer funds that are earmarked for providing legal services to poor individuals. The Congress, the taxpayer, the Bars, and our eligible clients have a right to expect better.

Secondly, this Board's policy is to see that LSC itself and all of our grantees faithfully conform all their activities to those authorized in the statute, the Congressional appropriations riders, and the regulations issued by the Corporation.

Third, my understanding is that many of the actions of which he complains are not illegal under the Act and the corresponding regulations. The Act provides for great discretion at the local level. Recent riders requiring local bar representation on grantees' local boards is one attempt to bring about increased accountability.

Fourth, since 1982 LSC has undertaken several broad initiatives to guard against abuses in those areas where authority to do so has existed. The attached memo, from the Acting Secretary to the Board, summarizes those initiatives.

Fifth, where the appropriate response has been defunding, such action has been taken. The attached memo, from the Acting Director of the Office of Compliance and Review, discusses four cases as examples of this.

As to those areas where corrective action has been overly burdensome, time consuming and expensive or where legitimate complaints by Congress against actions that are now permissible are registered, I am hopeful that those two areas of concern can be addressed and clarified in LSC's new reauthorization statute. As a first step, incorporation of several of the riders (i.e. - class action, local board composition) into the Act would be beneficial. Increased flexibility in the statute and the end of micromanagement will enhance our ability to carry out LSC's statutory purpose.

LSC staff is prepared to work with Congress throughout the reauthorization process to see that all the concerns raised by Senator Gramm, other Congressmen, and you are taken into consideration in reauthorization.

I share your hopes that LSC in the future will stay on the track of helping poor individuals who seek access to justice.

Very truly yours,

Clark Durant ss

W. Clark Durant, III
Chairman, Board of Directors
Legal Services Corporation

MEMORANDUM

TO: W. Clark Durant, III
Chairman of the Board

FROM: Dennis Daugherty
Acting Secretary

DATE: June 6, 1985

RE: List of LSC Initiatives since 1982
to Address Certain Abuses

1. Establishment of the Office of Compliance and Review. This office considers complaints of poor service or violations of the LSC Act, regulations, and appropriations provisos. It was established to ensure a thorough independent review of complaints by persons other than those in regional offices who had in many cases originally selected the grantee for funding. Since its establishment, it has begun over 334 investigations.

2. LSC is developing a more objective monitoring instrument, has established policies to enforce the requirement that independent evaluators be part of each monitoring team, and greatly improved the information gathered through the Refunding Application. Improvement of Case Service Reports is also under study. These improvements have resulted in more grantee attention to efficiency, more reliable data for Congress and LSC policy makers, and fairer LSC treatment of grantee organizations.

3. LSC's auditing staff has been significantly increased to improve financial accountability. Revision of the Audit Guide is underway.

4. LSC undertook in 1983 a comprehensive review of its nonlocally based grantees. This included monitoring visits to 17 national support centers, 11 of 67 state support recipients, the National Clients Council and the Reginald Heber Smith Fellowship Program. The reviews revealed serious problems at the National Clients Council, leading to an independent hearing officer's recommendation to deny refunding.

5. LSC cooperated fully with GAO and congressional oversight committees examining political abuses of the LSC program. LSC acted to deny refunding to one grantee who had campaigned against a ballot proposition, but that action has since been overturned by both Congress and a federal district court.

6. LSC has made revisions in its regulations and instructions to address problems raised and to implement requirements in Congressional Appropriations riders. (Please see the attached summary chart.)

REVISIONS IN LSC REGULATIONS AND INSTRUCTIONS 1982 84
AFFECTING GRANTEE CONDUCT

SUBJECT	SOURCE	PRIOR REGULATION	NEW REGULATION	SIGNIFICANT CHANGES BETWEEN PROPOSED AND FINAL REGULATION
LOBBYING 45 CFR 1612 (3 21 83) (5 31 84)	P.L. 98-166 P.L. 97-377 Sec. 1007(a)(5)	Lobbying of legislators permitted on behalf of a client; at request of official; or when legislation affects grantee or LSC.	Communication with legislators prohibited except to respond to a request from the official; to seek introduction of private relief bill; or to bring problem to legislator's attention after judicial and administrative relief are exhausted.	
		Grassroots lobbying permitted in same circumstances.	No attempts to get public to contact legislators for or against legislation permitted. No publications describing legislation are to be sent to general public or clients in general, as opposed to clients who have sought legal assistance in related area.	
		Lobbying of agency personnel permitted in same circumstances.	Attempts to influence agency action prohibited except as necessary in connection with a particular application, claim or case, or in response to an official's request. Grassroots lobbying prohibited.	Proposed rule, following Hatch statement in Congressional Record, would have prohibited all involvement in agency rule making. Final rule permits "as is necessary to affect a specific claim, application or case directly involving the client's legal rights."
		Grantee responsible for determining what documentation required.	Quarterly reports of activity to be submitted to LSC along with all publications discussing legislation. Records of requests from clients and officials are required as are records of time spent on lobbying.	
		Fulltime legislative office permitted.	Fulltime legislative office prohibited.	

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SUBJECT	SOURCE	PRIOR REGULATION	NEW REGULATION	SIGNIFICANT CHANGES BETWEEN PROPOSED AND FINAL REGULATION
DENIAL OF REFUNDING 45 CFR 1625 (11 30 83)	Sec. 1011 P.L. 98-166	Administrative proceeding if grant reduced by $20,000 or 10% (unless proportional reduction required by reduction in LSC appropriation) or if onerous conditions imposed.	Hearing if grant reduced by 10%. (unless reduction required by uniform application of statistical formula).	
		Grounds for denial include requirement to implement law; substantial failure to comply with law or regs, after warning of violation from LSC; or substantial failure to provide economical and effective legal assistance meeting generally accepted professional standards after notice and opportunity to take corrective action	Grounds for decision not to renew grant expanded to include finding that another organization could provide better service; no requirement of prior notice of significant violations of. law, regulation or grant terms.	
		Burden of proof on LSC.	LSC has obligation of proving disputed facts relied upon as justification for denial; otherwise burden on recipient.	
GOVERNING BOARDS 45 CFR 1607 (1 17 83) GUIDELINE (8-15-83)	P.L. 97-377	60% of board to be attorneys; could be appointed by any organization selected by recipient. No more than 1/2 of attorneys could be appointed by one organization.	60% attorneys; Majority of board to be appointed by one bar assoc. whose jurisdiction is coextensive with that of grantee; or if no coextensive bar, a combination of state, county and municipal bars. Must make effort to include women and minority attorneys.	

SUBJECT	SOURCE	PRIOR REGULATION	NEW REGULATION	SIGNIFICANT CHANGES BETWEEN PROPOSED AND FINAL REGULATION
ELIGIBILITY (11-30-83)	Sec. 1007 (a)(2) 45 CFR 1611	Groups eligible regardless of member income if primary purpose is furtherance of interest of poor people.	Groups eligible if majority of members individually eligible.	
		Income from public benefits excluded in determining eligibility. Some mistakenly understood cap to be after-tax income exceeding 125% poverty line.	All pretax income considered in determining eligibility.	
		Exceptions could permit person of any income to be served- exceptions for age, income prospects, debts and medical expenses.	Only high medical or nursing home expense can warrant serving anyone with income over 187.5% of poverty. Must document reason for serving anyone over 125%.	
		Local programs to take liquid assets into account in determining eligibility, but no requirement of specific ceiling.	Local programs must set ceiling on assets (liquid and nonliquid) subject to some exceptions, just as income ceiling subject to exceptions. Need not consider home equity in assets.	Proposed regulation would have set a national assets ceiling of $1,500 ($3000 if over age 60) excluding many assets, such as $10,000 in work related equipment, $1,500 value in auto; $15,000 equity in a home.
PRIORITIES 45 CFR 1620 (5-9-84, corrected 6-1-84)	Sec. 1007 (a)(2)(C) 1007 (a)(3)	Old reg. silent on equal access.	Grantee shall provide reasonably equal access throughout service area to same type of services and level of representation, to extent economically feasible, except as priorities differ in different parts of the service area.	
SUBGRANTS, FEES AND DUES 45 CFR 1627 (11-30-83)	Sec. 1006 (b)(1) 1007 (a)(3)	No reg. Grant assurance stated all subgrants to be subject to Act, regs. audit requirements, etc.	All subgrants require LSC written approval, may not exceed one year, and are subject to all rules applicable to LSC grants.	
		No limit on fees or dues dues except consistency with purposes of grant.	Outside of dues paid to qualify for reduced cost professional liability insurance or health insurance, total fees and dues shall not exceed the greater of $1,500 or 1/2 of 1% of grant. Not to be used for purposes one could not directly use grant.	

SUBJECT	SOURCE	PRIOR REGULATION	NEW REGULATION	SIGNIFICANT CHANGES BETWEEN PROPOSED AND FINAL REGULATION
[illegible] BALANCES 45 CFR 1628 ([illegible] 83) [illegible] 83-4 ([illegible] 83) superseding that [illegible] 83)	Sec. 1006 (b)(1) 1007 (a)(3)	No limit on carryover. Informal policy required approval of spenddown plan if carryover exceeded 10%	No grantee may carry over more than 10% of annual grant, or up to 25% with LSC waiver. One time funds must be spent within specified period. Deficits prohibited. Use of LSC grant to liquidate deficits requires LSC approval.	Note: Implementation of Instruction in 1983 was enjoined
PRIVATE ATTORNEY INVOLVEMENT 45 CFR 1614 ([illegible] 83) [illegible] 83-5 ([illegible] 83)	Sec. 1007 (a)(2)(C) 1007 (a)(3)	Instruction of Jan. 1982 required 10% of basic field grants be used to provide opportunities for private attorney involvement. No comparable requirement.	12.5% of basic field required. Some involvement required of migrant and Native American grantees and support centers also. Value of services received must substantially exceed cost. Fees to attorneys not to exceed 50% of local prevailing rate. Requires more specific records on staff time counted toward requirement.	
ATTORNEYS FEES 45 CFR 1609 ([illegible] 83)	Sec. 1007 (b)(1)	Fee-generating cases may not be accepted unless they are of type that private attorneys in area usually do not accept. Any fees recovered must be spent in accordance with Act.	Actual attempt to refer fee generating cases required. Fees received must be spent in accordance with restrictions on use of appropriations in year received and subject to LSC regulations.	
ALIEN REPRESENTATION 45 CFR 1626 (6 30 83)	P.L. 97-377	None. Previous appropriations riders had been interpreted to bar representation of illegal aliens only after final order of deportation.	Representation of aliens limited to permanent residents; close relatives of citizens; and refugees. Aliens seeking service must present documentation of status. Existing cases to be referred to outside counsel or continued with pre-1983 funds.	

SUBJECT	SOURCE	PRIOR REGULATION	NEW REGULATION	SIGNIFICANT CHANGES BETWEEN PROPOSED AND FINAL REGULATION
BONDING OF RECIPIENTS 45 CFR 1629 (7-16-84)	Sec. 1006 (b) (1)(A) 1007 (a) (3)	No similar provision.	Fidelity bonding at level of 10% of annual funding (but not less than $50,000) required on all employees handling funds.	
SEVERANCE PAY Instruction 83-2	P.L. 97-377	No similar provision.	Severance pay cannot exceed that for similarly situated federal employees.	

MEMORANDUM

DATE: May 30, 1985

TO: Steve South, Assistant Counsel to the Vice President

FROM: Victor M. Fortuno, Acting Director
Office of Compliance and Review VMF

SUBJECT: Information for Response to Senator Rudman's Questions

In response to Senator Rudman's question, "[W]hat has been done in the past to assure that some of these outrageous acts [committed by legal services programs around the country] are not repeated and to the extent that action has not been taken on some of them, what action you would propose...to do that [?]," please be advised of the following examples:

-National Clients Council

In late 1983, LSC conducted a review of NCC and discovered a number of significant violations of law, guidelines and instructions issued by the Corporation, as well as one or more of the terms of its Grant. These include serious financial abuses such as the expenditure of approximately $10,000 during one nine-month period alone to rent cars for the personal use of the Executive Director in commuting to and from his home and office; numerous improper salary advances; improper consulting fees; improper travel expenditures; and various unauthorized contracts for goods and services. In their most favorable light, they showed gross negligence in the handling of public funds and a total insensitivity to the needs off the client public funds. At worst, these financial abuses showed a continuous and deliberate conversion of public funds for private purposes in violation of law and public policy.

Based on the evaluation teams Report, the Corporation also found that NCC had generally failed to maintain adequate records, which made it impossible for the Corporation to effectively monitor both the purpose of NCC's expenditures and the quality of its performance under its Grant. This problem was exacerbated by NCC's refusal to provide the review team with access to various files, in violation of its express commitment under the Grant to "cooperate with all...evaluation activities undertaken by the Corporation, and give ...access to all records, books and papers or documents" requested by the Corporation. In addition to these legal and contractual violations, the Evaluation Report revealed that NCC's performance was seriously deficient in areas such as training and technical assistance which are the primary objectives of the Grant, as well as the main activities in which NCC claims expertise.

As a result of the Review Team's findings, on January 4, 1984, LSC notified NCC of its preliminary determination to deny refunding to NCC for 1984 in accordance with 45 CFR 1625. In particular, the letter states as follows:

> Overwhelming evidence has forced us to conclude that NCC is in noncompliance with Section 1625.3(b) by failing to comply with provisions of the law, rules, regulations,

> guidelines, instructions and grant conditions issued by the Corporation.
>
> Furthermore, NCC has failed to utilize public funds in a prudent or economical and effective manner. The Board of Directors of NCC has failed to exercise its powers to assure its fiduciary responsibilities and appropriate public stewardship. Therefore, the fiducial relationship between the Legal Services Corporation and NCC has been breached.
>
> We are compelled to initiate this action as the result of as review of NCC's operations conducted in October and November 1983 which disclosed the following deficiencies.
>
> * * * *

The letter also advised NCC of its right (under 45 CFR 1625 and Public Law 98-166) to request a review of LSC's preliminary determination to deny it refunding for 1984.

NCC requested such an administrative review and therein generally contested the Review Team's findings. The Administrative Hearing was presided over by Richard S. Gebelein, Esq., an independent hearing examiner, and was held from March 5, 1984, through April 19, 1984. It consisted of twenty (20) full days of testimony covering almost 5,000 pages of transcript. Seventeen witnesses testified at the hearing and thousands of documents were introduced.

The hearing was followed by lengthy post-hearing submissions and motions of various sorts, and the independent Hearing Examiner's forty-two page Opinion and Recommended Decision was issued on March 1, 1985. NCC thereafter appealed the Hearing Examiners's Recommended Decision, and that appeal is now pending.

-Regional Heber Smith Community Lawyer Fellowship Program ("Reggie Program")

In the summer of 1984, LSC monitored the Reggie Program and found that the Program's executive director appeared to be subsidizing his own private law practice with Program funds;[1] that this same executive director had engaged in some apparent violations of the prohibitions against political activity;[2] that there were, to put it mildly, some possible travel abuses and fiscal irregularities engaged in by Program personnel;[3] and that the Program had consistently failed to obtain required LSC approval of subcontracts and consulting agreements in excess of $1,000.

LSC has not yet fully concluded its work on this matter, but one thing that did result from the review and what it revealed was that Howard's administration of the Reggie Program was discontinued and LSC is now deciding whether and, if so, how to continue such a program.

-Southeast Legal Aid Center, Inc. (SELAC)

In late 1982, LSC sought to monitor SELAC pursuant to its statutory duty. However, SELAC refused to allow LSC to monitor it. For that reason LSC thereafter defunded SELAC.

-Central Louisiana Legal Services

On February 25, 1985, Josh Bursh, CLLS' former Deputy Director pled guilty to 14 counts of theft (of $35.657) from CLLS. (On April 2, 1985, he was sentenced to imprisonment for a term of 8 years.) At the time of the thefts, Bursh was on parole for a prior Lincoln Parish theft.

As a result of this situation (prior to the conviction but subsequent to Bursh's indictment), LSC drafted and implemented a regulation requiring recipients to obtain Fidelity bonding for their employees and agents who handle funds or property of the program. The regulation, 45 CFR 1629, requires that "[e]ach program ... certify in its Application for Refunding, beginning with the application for FY 1985 funds, that it has obtained a bond or bonds which satisfy the requirements of (this regulation]." 45 CFR § 1629.6. In particular, § 1629.2 provides as follows:

> ### § 1629.6 Effective Date.
>
> (a) Each program shall certify in its Application for Refunding,
> beginning with the application for FY 1985 funds, that it has obtained a bond or bonds which satisfy the requirements of this Part.
>
> (b) A copy of such bond or bonds shall be provided to the Corporation at its request.

During the course of its review of the Reggie Program, the monitoring team learned that the program's Executive Director engaged in the outside practice of law during his tenure with the Program.

The first such instance to come to the team's attention was Mr. Davis' role as lead counsel for the plaintiff in the case of Charlene Pope v. Local 400, United Food and Commercial Workers Union. U.S. Dist. Ct. for the District of Columbia, Civil Action #81-1349, wherein Mr. Davis requested $146,961.00 for his services as of January 19, 1984, and an additional $27,945.00 for services performed between January 19, and April 2, 1984.

It should be noted that these amounts are only for the time put in by Mr. Davis. The total amount requested thus far as counsel fees, costs and expenses exceeds $360,000.

The monitoring team was unable to determine whether Mr. Davis had requested (or intends to request) any additional sums for services more recently performed.

Upon learning of and confirming this one instance of outside practice by Mr. Davis, the team attempted to ascertain whether Mr. Davis has been handling other such cases.

There were both oral and repeated written requests made of Mr. Davis for this information, but with rather limited success.

In any event, it appears that Mr. Davis handled at least nine other cases and rendered professional services to Amtrak, for which services he was paid at least $29,805 in compensation.

Aside from the question of whether Mr. Davis is authorized to engage in the outside practice of law, the monitoring team was alarmed by what appeared to be the subsidization of an outside practice with RHS funds.

Mr. Davis' former Executive Secretary and his former Special Assistant both informed members of the monitoring team that Mr. Davis operated his private legal practice from the RHS offices, using RHS staff, supplies and equipment to do so.

For example, team members were informed that Mr. Davis' private practice correspondence was routinely typed by RHS staff, during RHS time, on the RHS and copied on the RHS photocopying machine, with RHS paper stock and mailed out through the RHS postage machine.

They were further informed by a number of former RHS employees that Davis' pleadings were also typed and reproduced by RHS staff during RHS time. Lastly, team members were told that when a staff member had to stay on past regular business hours to continue working on Mr. Davis' private practice, he/she was given RHS compensatory time for those extra hours.

When asked how he did the voluminous photocoping required by his practice, Mr. Davis conceded that he used the RHS photocopying machine and paper stock for this purpose, and that he did not repay RHS for these, or so much as keep any record of the extent of such use.

In the Pope case, supra, Mr. Davis submitted Abstracts of Hours in support of his request for attorneys' fees. The several Abstracts list hours worked on specific dates by RHS staff and consultants. The RHS time sheets for these staff members and the relevant consulting agreements, when compared to the aforementioned Abstracts of Hours, disclose considerable overlapping.

For example, according to Mr. Davis' own Abstract of Hours, on October 10 and 11, 1983, he was in meetings and conferences in connection with the Pope case for 12.5 and 8 hours, respectively. The Abstract also indicates that from October 12th through October 19th, Mr. Davis was in court each weekday for at least seven (7) hours a day trying the Pope case. For this time period, Mr. Davis did not report any time off from RHS. In fact, RHS' Time and Attendance and Leave Used reports do not show him as taking any time off during this period for which he received $1,900.12 in salary from RHS.

Another example is that of Prather Randle, Davis' co-counsel in the Pope case. Between December, 1982 and January, 1984, Mr. Randle was contracted to provide services to RHS on at least eight occasions. For his services, Mr. Randle was paid approximately $9,495 with LSC funds.

Mr. Randle also submitted an Abstract of Hours to the Court in support of his request for over $162,000 in attorney's fees for services which he rendered in connection with the Pope case.

The monitoring team reviewed all Statements of Consultant Services and compared the dates of services with the Abstract of Hours of Prather Randle which was filed with the Court. It was discovered that during October and December, 1983 and also January, 1984, Mr. Randle was under contract RHS at the rate of $150 per-day to provide various services. However, on eleven days during those periods, Mr. Randle certified to the Court that, for at least seven (7) hours and as much as eleven and one-half (11.5) hours, he was either in trial, in conference, or researching matters for the Pope case.

The team was also told that Mr. Davis had an ongoing business relationship with Amtrak, that his services were rendered to this organization during regular business hours, that he had both an office and a secretary provided by Amtrak for his use, and that he normally did not take leave of any type from the program during his absents, thus receiving compensation from both the program and Amtrak. Davis' former Executive Secretary stated that she was instructed by Mr. Davis to sign his time records for a full day whether or not he was in the office.

According to Amtrak, they had Mr. Davis under contract since 1981. He rendered services in connection with the case of Crump, et. v. Amtrak, Civil Action No. 79-1506 (D.D.C.). Amtrak has also informed the team of the following:

> The services rendered under the agreement included the investigation and conciliation of claims, preparation of unresolved cases investigation and resolution of complaints for presentation to the Special Master, about non-compliance with the terms of the Consent Decree.
>
>> Mr. Davis had a great deal of flexibility in scheduling the performance of services required by the Consent Decree. Meetings and interviews with employees and management occurred during regular office hours, but we lack personal knowledge of how many or when. Most of the investigation aspects involved reviewing filed documents and reports, which could have been done at any time.

According to Amtrak's records, Mr. Davis was in attendance at its headquarters at least sixty-four (64) days during regular business hours during the period from June 1, 1981, through November 18, 1982. However, a review of Mr. Davis' RHS time records (bearing Davis' own signature) discloses that he was reported to be on RHS time from 9:00 a.m. to 5:30 p.m. on each of these days. Thus, Mr. Davis was evidently compensated by RHS even though he was actually spending at least part (if not all) of this time performing work unrelated to the program. (See Schedule D.) As mentioned above, Mr. Davis has received al least $29,805 in compensation from Amtrak.

: During its review of the Reggie Program, the monitoring team came into possession of photostatic copies of certain troubling letters, the authenticity of which was acknowledged by John Davis. All three letters are on RHS letterhead and are signed by John W. Davis. On each of the three letters, Davis identifies himself as RHS' Executive Director.

Two of the letters are thank you letters "[o]n behalf of Wellington Webb, candidate for the Mayor of Denver...", and both are dated May 10, 1983. The third letter is to "Friends of Peterson Zan" and was evidently accompanied by a $100 check. The letter closes with the sentence, "Please let [me] know what I can do here in Washington to help my friend's candidacy."

In addition, a former RHS staff member told the team that Mr. Davis solicited a financial contribution from her for the campaign of Wellington Webb, the aforementioned candidate in the Denver mayoral race. This former staff member further reported that prior to this she did not know who Mr. Webb was, and that other members of the RHS staff also made financial contributions to Mr. Webb's campaign.

The reader's attention in here referred to sections 1006(d)(3), 1006(e)(1), 1006(e)(2), and 1007(b)(4) of the LSC Act, Section 1502 of Title 5 of the U.S. Code (The Hatch Act), Section 1608.4(b) of Title 45 of the Code of Federal Regulations, paragraph A(2) of Section XVIII of the LSC's Reggie contract with Howard University, and sections 501(a) and 501(c)(3) of the Internal Revenue Code of 1954. The following is a discussion of a few of these.

a) General Prohibitions Against Political Activity

> Section 1007(b)(4) of the LSC Act provides as follows: No funds made available by the Corporation under [the LSC Act], either by grant or contract, may be used... for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;
>
> and, in pertinent part, section 1007(a)(6) prohibits "any political activity."
>
> Section 1608.4(b) of Title 45 of the Code of Federal Regulations for Legal Services provides as follows:
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>> No employee shall use any Corporation funds for activities prohibited to attorneys under Section 1608.6 [which prohibits "any political activity"]; nor shall any employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

It appears, then, that the letters in question may well have violated sections 1007(b)(4) of the LSC Act and 1608.4(b) of the Code of Federal Regulations for Legal Services.

b) Contractual Obligation to Comply with the Internal Revenue Code

LSC's Reggie Contract with Howard, at paragraph A(2) of Section XVIII, obligated "Howard and the Law School...to...[c]omply with sections 501(a) and 501(c)(3) of the Internal Revenue Code of 1954."

Section 501(c)(3) of the Internal Revenue Code of 1954 forbids a tax exempt organization form "...participat[ing] in, or interven[ing] in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office." 26 U.S.C Section 501(c)(3).

[3] For example, George Tate, the Program's Fiscal Officer, took a trip to Chicago from June 1 through 5, 1983. The cost of the trip was $1,126. In requesting the cash travel advance from the University for this trip, Mr. Tate represented that he would be attending an RHS Advisory Board Orientation Planning Committee meeting at the LSC Chicago Regional Office form June 1-5, 1983.

The monitoring team contacted the Corporation's Chicago Regional Office to check on whether such a meeting did in fact take place and learned that there was no such meeting. There was only a two-hour meeting, which was held from 9:30 a.m. to 11:30 a.m. on June 2nd, and which had nothing to do with any "RHS Advisory Board Orientation Planning Committee" --it was simply to meet with the Reggie fellow from Prairie State Legal Services and that program's Executive Director to resolve a dispute they were having.

When Mr. Tate was asked to explain this discrepancy, he indicated that the purpose which he had stated on his request for a travel advance was "a mistake." Mr. Tate was then asked to explain the purpose of staying in Chicago for the remaining days (i.e., June 3-5). Indicated below are the reasons Mr. Tate gave (at different times) for extending his stay in Chicago.

- Mr. Tate said that he made attempts to contact Glenn Carr, RHS' former Executive Director (and, at the time in question, an Assistant State Attorney in Illinois), to obtain his opinion on Reggie orientation and to discuss Private Bar Involvement. Mr. Tate then stated, however, that contact with Mr. Carr was in fact not made during the trip;

- Mr. Tate stated that he had meetings with and took to lunch/dinner the Reggies then assigned to the Legal Aid Foundation of Chicago. At the monitoring team's request, the Corporation's Chicago Regional Office contacted those Reggies, and the Reggies stated that they neither met nor dined with Mr. Tate; and,

- Mr. Tate stated that he attempted to meet some United Airlines employees to resolve problems with an air freight bill. Mr. Tate also indicated that he purchased meals and drinks for two United Airlines employees, a Mr. Hight and a Ms. Searcey, "while transacting business with United Airlines. Mr. Tate further stated that he spent two nights at Mr. Hight's home during his stay in Chicago and claimed that he had paid Mr. Hight $50 a night for the stay.

The monitoring team contacted United Airlines and learned the following. Mr. Hight and Ms. Searcey are husband and wife and are flight attendants for United Airlines. The team was informed that, as flight attendants, they would have no reason to be involved with a dispute over a freight bill.

A review of RHS' financial records and United Airlines' check of there own records disclosed that the only United Airlines freight bill close enough in time was a December 1982 bill for $220.17. It was difficult for the monitoring team to accept that a dispute over the amount of that freight bill would justify such expenses.

ACTION BY TEXAS LEGAL SERVICES

Senator RUDMAN. One of the items he mentioned was quite surprising. I don't know if you know about it. It was an action brought by Texas Legal Services to bar the special election that then Representative Gramm called for after resigning from the House and switching parties from Democrat to Republican. The partisan issue is not even involved here. The issue that I want to know is what in the devil is Legal Services Corporation doing getting involved in trying to stop elections? The Texas attorney general could do that if there was a reason. Other interest groups could do it. That is not what we are appropriating money for and frankly, I am very upset to hear about that. I want to know what is going on.

My friend from New Jersey, Senator Lautenberg, does have other commitments this morning, so I am going to yield to him.

Senator LAUTENBERG. Mr. Chairman, I looked forward to seeing Mr. Durant, and I am sorry I couldn't be here for earlier hearings, but Legal Services plays a very important role in defending those who don't have the means to take care of their own problems.

So I would ask Mr. Durant, if you can, pursuant to the agreement of the chairman, to consolidate any remarks that you have so that we can get on with some questions before I have to go.

OPENING STATEMENT

Mr. DURANT. Fine. Let me, if I might, just say two things, one in response to the chairman's remarks about the confirmation. I want publicly to thank Senator Rudman for his leadership and his assistance to me and to other members of the Board for the help and the leadership that he has shown to try and bring some stability back into what has been a very difficult set of circumstances. I have worked closely with him, and I very much appreciate the help that he has given me. I look forward to that relationship continuing, hopefully for a long period of time.

Senator RUDMAN. I thank you for those comments.

Mr. DURANT. As far as any prepared statement, I did submit one for the record for the hearing 2 weeks ago. Let me simply say that I am making a concerted effort, where I can, to visit legal services programs, although I am restricted financially in my ability to do that. I was in

Boston a few weekends ago; I have been down to North Carolina; and I certainly visited with all of the project directors of Michigan to try and get a deeper understanding of some of the day-to-day kinds of problems that have confronted them. Having represented indigent people for all of my practice, certainly, I know the particular kinds of problems that exist; and I certainly want to see those problems addressed.

Senator LAUTENBERG. Mr. Durant, you didn't have a chance to visit New Jersey?

Mr. DURANT. I have not. As you know, the Congress has put financial restrictions on my ability to travel by tightly limiting compensation for travel expenses. My wife has laid down the law and I am not to absorb any more bills until my childrens' tuition is paid.

Senator RUDMAN. Mr. Durant is a practicing attorney in Detroit. This is a voluntary effort. There were restrictions placed, for what I consider good reasons at the time, restricting the Board's compensation. We had legislation pending which I had hoped would be cleared by now which would remove that restriction.

Senator LAUTENBERG. I would think for the chairman, how much time do you give this?

Mr. DURANT. Substantial. I mean in terms of being in Washington and sometimes when I come down on other things, I end up spending a proportion of that time on Legal Services matters, and I am spending 2 and 3 days a week away from my private practice.

Senator LAUTENBERG. That is excellent.

Mr. DURANT. In fact, I just got a letter from the president of the New Hampshire bar who was surprised that I was spending as much time as I was in terms of being involved in the program.

Senator LAUTENBERG. Are you the senior partner in your firm?

Mr. DURANT. No; my father is, but I am second. [Laughter.]

Senator LAUTENBERG. Is there a third? [Laughter.]

Mr. DURANT. There is not a third partner, there are associates.

Senator LAUTENBERG. Despite the irrelevant, I am the guy who gets the stick when you are on the bottom side of the ladder. If I might, Mr. Chairman.

Senator RUDMAN. You would like to ask some questions?

Senator LAUTENBERG. Yes; please.

FISCAL YEAR 1986 BUDGET REQUEST

You are proposing reductions and shifting some support of programs in order to facilitate the best use of this modest increase in the budget. I am kind of struck, however, by the size of some of the cuts being proposed in some programs in order to provide a fairly small increase in the field program. I want to explore with you the reasoning behind some of the trade-offs that you are proposing.

Is it possible that a 4-percent increase, again, relatively modest, is going to be spread too thin to make a difference to shift programs? How can you use those funds to make the operation more efficient when, in fact, you are determined, as I understand, to alter some of the programs that we have?

Mr. DURANT. I think one has to look at, first of all in the very broadest sense, all money that is available for Legal Services, not just those funds that come from Congress. I understand that in 1985 all of our programs received approximately $80 million from sources other than LSC.

It is certainly my hope that in my travels around the country I can locate and develop more funding sources. Senator Rudman sent me a letter last December to encourage the development of a wide range of additional sources of funding for programs.

IOLTA PROGRAM

Senator RUDMAN. You might explain the IOLTA Program to Senator Lautenberg. I think he would find that very interesting.

Mr. DURANT. It is a fascinating concept, and it has the potential to generate a tremendous amount of support for Legal Services. IOLTA stands for interest on lawyers' trust accounts, and money that is collected in trust accounts that otherwise would not produce income is collected in an interest fund and the interest income then is disbursed for various charitable or educational purposes, but primarily for Legal Services programs. Currently, 35 States have IOLTA Programs.

Senator LAUTENBERG. This is from private clients?

Mr. DURANT. Yes, private clients.

Senator LAUTENBERG. Is that right? Are there any State laws requiring that their interest on funds in trust be accumulated adhering to the client's benefit?

Mr. DURANT. The question has come up in two cases in Florida and in California as to whether or not that amounts in effect to taking private property, the interest on those. Both courts have determined that it has not.

Senator LAUTENBERG. I was just curious as to whether there was, because I know this question has been kicking around, and not being a lawyer, I hear it is kind of off the beaten path. Are there any States, Warren, that require that those funds be disclosed?

Senator RUDMAN. Not that I know of.

Senator LAUTENBERG. That is interesting for a piece of legislation. Please go ahead.

Mr. DURANT. I think in terms of our allocation of the budget, one of the things that we want is to focus on direct delivery programs and that is reflected in the 4.5-percent increase given to direct delivery programs. We felt that, in reviewing a number of documents and testimony that the important thing was to try and focus on the front line. When I say line, I mean the infantrymen, if you will, out in the field, and to try and assist them in the day-to-day kinds of problems that they would have. While 4.5 percent might be a modest increase, it was important, it seems to me, to send a signal as far as this Board's particular philosophy is concerned.

LOCAL PROGRAM DISCRETION

Senator LAUTENBERG. There will be additional field staff provided as a result of the increase?

Mr. DURANT. I would imagine so.

Senator LAUTENBERG. Does anybody have any idea? Isn't it fair to say that you have to assume that you are going to get the increase and how you plan to use it? It is not going to be in salary increases.

Mr. OPSUT. Local programs do their own hiring. We grant funds to local programs around the country. They do the hiring of the lawyers and the paralegals and so on.

Senator LAUTENBERG. But you give them instruction. There is some kind of guideline with which they operate?

Mr. OPSUT. They are independent, not-for-profit corporations.

Senator LAUTENBERG. If they get an increase in funding, can they just put it in the bank and gather interest?

Mr. DURANT. Under present circumstances, I think that is correct. Local programs set their own priorities. Obviously, one of the things that we want to review is the kinds of options that some programs might exercise in terms of how they would spend that money, because I think that would go to the question of efficient operation.

But I think it is important that since every section of the country has its own particular needs and characteristics and the problems are very different, that there should be a substantial amount of local input as to how that money is spent.

Senator RUDMAN. I might, if you would yield for a moment, say that one of the things that we tried to do over the last several years is to try to get stronger supervision of these individual organizations within the States by the bar associations which tend to be very responsible.

There were complaints from a number of areas about too much centralized control. If you happen to have a liberal board, you have one problem; if you have a conservative board, then you have another problem. So we said: let's get the local people. I know in my State, the New Hampshire bar does an excellent job of telling Legal Services what to do.

I guess my comment would be that we have more or less told you to try to be more independent out there. We have tried to do that over the last 3 years.

Mr. OPSUT. And we have done that in terms of the bar associations having the appointing authority for the local board of directors so there is better management at the local level.

INVOLVEMENT OF PRIVATE BAR

Senator LAUTENBERG. One of the new programs that is what I will call the privatization factor and I know that the private bar has been very helpful in providing services pro bono to supplement the work of legal services. I wonder, though, how profitmaking law firms, and after all, that is a noble pursuit. I did that before I was here, not law, but profit, and so I am noble. [Laughter.]

How can they provide the same level of services? All of us have had the experience, perhaps not those in the profession so much, but I include myself in those that I addressed of the winding up with the young person who has just graduated from law school and is assigned to a job, and I lost a very nice case because we just didn't pay attention to the thing.

How do you know that that is not going to be the case? After all, as I see it, the estimates that you have developed for services have been considerably shaved by the bids, if I might call them that.

What is going to happen with those?

Mr. Durant. That is a very good question.

What we are trying to do in our experimental private law firm projects is to determine essentially two things: price and quality.

Senator Lautenberg. Price is easy. The problem is quality.

Mr. Durant. I agree. One of the things that is very interesting in the *Bates* case that the Supreme Court decided a number of years ago regarding lawyer advertising is that a criticism was made in *Bates* that advertising would result in bringing about lower prices which would result in lower quality. Much of the research on that was by a law professor down at Emory by the name of Fred McChesney who had done a series of projects to review and compare the services of legal clinics with what you might call the more traditional law firms in terms of both price and quality.

McChesney found that not only did price go down, but, using the same questionnaire and forms that Barbara Curran used in her 1977 study on legal needs for the American Bar Foundation, in most cases, the quality delivered by the clinics, and in this case, Jacoby & Meyers, exceeded what was done by a traditional law firm.

Senator Lautenberg. That is hard to generalize.

Mr. Durant. Absolutely, absolutely. So we have taken five, in fact I think it is more than five, target areas around the country and experimented with contracting out, you might say the kinds of cases that are more easily subject to routine handling, to determine whether or not the same level of quality and lower price is possible.

Quality will be measured in a variety of ways: direct contact with the client to find out what the client thought of the result; talking with the local bar associations to see whether or not any complaints were filed relative to the particular way a case was handled; checking with local staff programs, since some of these projects have been developed and will be done hopefully in coordination with local staff programs, to find out what some of the staff administrators think and what reactions they may have received; all for the purpose of focusing on: Are we getting lower prices and getting the same or better quality?

The whole conceptual basis to try to do this is, in effect, to maximize the use of our resources.

CONTRACTING OUT CASES

Senator LAUTENBERG. I salute that. The thing that scares me, very frankly, is that you will get bids from law firms pressed for business. I mean, after all, we now are making a safe, profitmaking decision. It is OK. We want to go private, we expect people to compete for business, and therefore, to get, I think, it is likely someone trying to meet the overhead and so forth and getting people in the scene and when I look here, I assume that is Jacksonville, FL, right?

Mr. DURANT. Yes.

Senator LAUTENBERG. The bid per case was $96 for a matter of divorce, whereas the estimate was $200. I don't know; Jacksonville, FL, is not in the boonies. It is a thriving metropolis.

What kind of an hourly rate might a practicing attorney work for in Jacksonville, FL?

Mr. DURANT. Let me relate two recent experiences that I think would be helpful on this issue. When I was in Boston talking with some people who were connected with the volunteer lawyers project and with the Greater Boston Legal Services and a number of the private lawyers, one fact that came out was very interesting: That the tremendous use of and increase in paralegals had proven a tremendous advantage in terms of doing two things: reducing costs and making sure that more clients could be served than previously with just lawyers.

I talked with a lawyer in San Antonio just 2 days ago in private practice, and he is working out some kind of an arrangement with some of the legal services offices where, when there is an overflow in divorce matters, he picks up some of those on a pro bono or a substantially reduced fee basis.

So I think there is no question that if the estimate is $200 and somebody comes in with $96, you might say, wait a minute, it sounds like any construction bid. What is he including? Is this a low ball bid just to get the contract, or are the performance standards going to be met? I think the only way to know that is after a certain period of trials and testing.

LAWYER CHARGES FOR UNCONTESTED DIVORCES

Senator RUDMAN. If the Senator would yield for a moment. We have been involved with private legal foundations with the attorney general of our State in trying to get legal services delivered to poor people. I have come to the conclusion, which many of my colleagues in the bar might disagree with, that a lot of lawyers do things that you don't need to be a lawyer to do. I think the price that lawyers historically charge for uncontested divorces is considerable. I know a fellow in New Hampshire who used to make $200,000 a year handling uncontested divorces.

He spent most of his time on the golf course. The secretary did the work. All she had to do was change the names and the dates. Many landlord tenant matters can be handled by paralegals. A lot of very simple administrative tribunals on compensation and things of that sort, fairly simple, can be handled by nonlawyers. It seems to me that if we

BEST C[illegible]AILABLE

are talking about legal services to poor people, one of the things we ought to explore is a way to find people who can be trained to do this at a cost less than lawyers wish to earn.

Lawyers generally have a rather definite idea of what their annual incomes ought to be. [Laughter.]

Senator LAUTENBERG. I used to work on a lot of them. [Laughter.]

Senator RUDMAN. I did want to make that observation. The fact of the matter is that I applaud cost-reducing measures which will not result in a reduction of quality.

Let me say, there are going to be some matters, obviously, where someone's rights are being infringed upon and you will need some very competent and trained legal talent. However, many of the things people need, particularly poor people, do not require that level of training and expertise.

Senator LAUTENBERG. I am sure the chairman didn't intend perhaps a Freudian slip; people, particularly poor people, do not need that level of expertise. I mean, if someone is poor and they have got a divorce or negligence or what-have-you or a liability case of some kind, they need the services in the same way.

Senator RUDMAN. I would say to my friend that the kind of legal problems generated by poor people generally do not have the level of sophistication that the middle- and upper-income people have, based on LSC's own statistics.

Mr. DURANT. Just as an observation, when I drive in to my office, I go through downtown Jackson, which is a low-income area where H&R Block or an analogous nationwide tax service is preparing 1040's at $8 and $9 and $10 apiece, which, if you brought them in my office, I could not do the work for that.

Senator LAUTENBERG. You charge less than that? [Laughter.]

COMPOSITION OF BIDS

I just want to conclude, and I thank you, Mr. Chairman, for the courtesy, with a question about these bids. Do they include take-in or screening services?

Mr. DURANT. In the evaluation of whether or not ultimately a lower price is, in fact, delivered, I think one has to take into account the screening that is done by staff lawyers or the staff projects, because that is part of the cost, if you will, of overhead that needs to be factored in. If we are going to be fair in the way we analyze things, I think we have to look at the total picture. I see that at this time.

Senator LAUTENBERG. I think, by the way, it is not a bad idea to try this and see how it works. It does need a lot of supervision, I think. To give the bar its reluctant due, the fact is that there is a lot of very good service provided by people I see in my community and I am sure just throughout the country by voluntary services from attorneys. I wouldn't like to thwart that by saying, OK, now we are going to be paying and instead, we will get the office that wants to fill its billing time or must fill its billing time in exchange for someone who is really dedicated to helping these people who need help. So I would urge you to keep a close eye.

Mr. Durant. Senator, our interim president is from New Jersey.

Senator Lautenberg. Where?

Mr. Opsut. Trenton.

Senator Lautenberg. OK. You know a lot of people who need help. Trenton is one of our most beautiful and yet a blighted city in so many ways.

Senator Rudman. I am going to yield to Senator Bumpers, because I asked for this hearing this morning, and I have a lot of questions that tend to be sequential in nature. If you would like to go ahead?

Senator Bumpers. Mine are very brief, Mr. Chairman. I appreciate your deferring to me.

First of all, we have not had any experience in my office with Mr. Durant yet, but Mr. Bogard was very dilatory in answering our inquiries over there, and I just want to make that point. I have been a friend of the Legal Services, but I used to get terribly aggravated because we couldn't get responses to our letters.

Mr. Durant. Senator Bumpers, I appreciate that, and if you don't get responses, I want to know.

RECAPTURE POLICY

Senator Bumpers. Second, I have had complaints from Legal Services in my State about something I don't fully understand and perhaps you can explain it to me, and that is, apparently, Legal Services has a recapture policy, whereby you recapture funds at the end of the year that are unfunded instead of allowing them to carry them over. Is that correct?

Mr. Durant. Since that is fairly technical, I will defer to Mr. Daugherty.

Senator Rudman. For the record, the board has been voted out, with the exception of two people, unanimously in the last hour. Mr. Durant is the Chairman of the Board; Mr. Opsut is the Acting President, and they are in the process of getting a new president. Mr. Durant is spending an enormous amount of time during this interim period.

I wanted Senator Bumpers to be aware of that.

Mr. Durant. Senator, I am going to have Dennis Daugherty answer that question.

Senator Bumpers. That is OK.

Mr. Daugherty. We adopted a policy in the beginning of 1983, Senator Bumpers, to require the recapture of carryover funds from the grants that we had made to providers in the previous year in excess of 10 percent. There is a proviso for a waiver if the program can justify having a fund balance, for a carry-over from the previous year up to 25 percent of the funds.

That was a point of contention in your State. We had a lawsuit brought against the Corporation by East Arkansas Legal Services. We had some programs, sir, whose carryover funds were equal to 90 percent of the funds that we had granted in that year to provide services to their people.

There were many reasons and some very good explanations for why that was the case, but it was our feeling that those funds ought to be recirculated and given to programs that had a plan for meeting the problems of their clients rather than be held in bank accounts.

Senator BUMPERS. How could somebody have 90 percent of their funds carried over? What is an explanation for that?

Mr. OPSUT. Part of the explanation was the type of funding policies that the Corporation had in the 1970's, where decisions were made in September of the year to award funds in a new area where we never had service before. People were given funds for the whole year and couldn't possibly spend all of those funds, since there was not enough time to allow them to hire staff. A lot of programs were carrying over fund balances over several years.

There were other programs in 1981–82 who anticipated the reductions in the appropriation that occurred in 1982 and who decided to hold on to some of those funds so as to slow down the process of laying off employees.

USE OF INTEREST FROM GRANTS

Senator RUDMAN. Senator Bumpers might find this interesting. It was reported to me that some of this money would be put into interest-bearing accounts and that the income thus derived was then used for activities that were otherwise precluded by the various restrictions that Congress had imposed on the Legal Services Corporation?

Mr. OPSUT. Yes, sir.

Mr. DAUGHERTY. Yes, sir. There is a question between us and some of our grantees as to whether or not income derived from the Federal appropriation is subject to restrictions in the appropriations. We maintain that it is, but there really isn't any question that funds in 1981 that are invested can be used for purposes that were legal in 1981 that are not authorized uses of 1984 funds.

One of the things that I think Mr. Opsut raised in his testimony is our programs should have to spend down their oldest funds first so that we don't have activities going on that Congress now wishes to prohibit.

Senator SPECTER. Can I interrupt for just one moment? May I just say I want to commend you for your workmanship. I would like to say that I would like to submit some questions for the record. I would like to stay longer because I have such a keen interest. But I have to go.

Senator RUDMAN. Fine. We will submit Senator Specter's questions for the record.

Senator SPECTER. Thank you very much.

Senator RUDMAN. I guess in the area of grass roots lobbying, that was precluded. But you could take $100,000, put it in the bank in a CD at 12 percent, get $12,000 and then take that $12,000, fund a lawyer for 6 months to bring a class action. Is that an accurate description of what was happening?

Mr. DAUGHERTY. Yes, or represent aliens not currently eligible for service.

RECAPTURE POLICY

Senator **Bumpers**. Let me say, as a matter of policy, two things. I don't think they ought to be carrying over those kinds of balances of invested or noninvested funds.

I found when I was Governor that if I let it be known that I was going to recapture all the balances, that was a great excuse to spend money foolishly, to get rid of it so they could come back and ask for more the next year. That used to be the trend, and still is with some bureaucrats.

But I think your policy is probably correct. There might be some possibility that they have a legitimate reason for carrying over some funds. I suspect that most of this occurred back when the President was trying to torpedo Legal Services, and they thought they were going out of business and they were trying to save money to have something to operate on as long as possible. While that is possible, it is a bad policy.

In any event, I think two things: I think that ought to be done on a case-by-case basis. If somebody does not have a perfect justification for having a balance at the end of the year that seems excessive, you ought to recapture it unless they can prove there was some reason to do it.

No. 2, I disagree strenuously—and I don't think that was the case in my State—but I would disagree strongly with taking investment income and using it for extra legal purposes.

Mr. **Daugherty**. Our policy, Senator, is that a program may automatically carry forward 10 percent of their grant funds. That is a reasonable amount. They can come in and prove to our satisfaction that there is a reason to carry over 25 percent. We do not permit carry-over in excess of that. But the courts did enjoin us from enforcing that policy in the case of your program in east Arkansas and in the case of any program in the country in 1983.

CORPORATE INVESTMENT INCOME

Senator **Bumpers**. Incidentally, in September of 1984, you had $466,000 in investment income.

What are you doing with that? We are talking about the contractors out there. How about Legal Services?

Mr. **Gessner**. That amount of money is not currently in the consideration for allocation. That is being held as a reserve for emergency use. That is the purpose of that.

Senator **Bumpers**. Why shouldn't that be used if there is at least a place to put it? I mean Legal Services Corporation, they are not a fiduciary saving money for stockholders.

Mr. **Durant**. We are going through, right now, a series of hearings to determine the best use of carryover funds, in terms of focusing on direct delivery, and also in terms of what Senator Lautenberg was talking about earlier, experimentation on a number of different projects, to see how to maximize the use of our resources.

So I know the feeling of the Board, Senator, is the same as yours. We are not saving money to pass out dividends but, in fact, to try and find appropriate and productive ways to use it.

ILLEGAL ALIENS

Senator BUMPERS. Are you prohibited by law now from representing illegal aliens?

Mr. DURANT. I think, because of the rider, the answer to that is yes.

Mr. DAUGHERTY. Yes, sir. As we discussed at the last hearing, Senator, we are precluded from representing illegal aliens and have been for a number of years, although there was some question as to the Corporation's interpretation of that.

Since 1983, we have been restricted from representing many categories of legal aliens, as well. For example, we cannot represent H-2 workers.

Senator BUMPERS. You can't represent who?

Mr. DAUGHERTY. The workers here with a green card.

Senator BUMPERS. Green card workers? That is a curious thing. The Supreme Court recognizes aliens as having many constitutional rights of citizens. I don't understand why somebody who the Supreme Court has ruled has all the rights under the American Constitution would be deprived of representation.

Senator RUDMAN. I guess the simple answer is because Congress says so.

Senator BUMPERS. That sounds like it. [Laughter.]

FUNDING LEVEL

Let me submit a question, Mr. Chairman, here, and I would sort of like to hear the answer. It is on behalf of Senator Hollings. I will just read the question to you, Mr. Durant.

"My staff has met you, and I have been looking forward to working with you to repair the damage to Legal Services by Mr. Bogard and his crew." This is Fritz Hollings. You know him. [Laughter.]

Senator RUDMAN. That is mild. [Laughter.]

Senator BUMPERS. He wrote this when he was in a mellow mood. [Laughter.]

Mr. DURANT. I am glad you read it.

Senator BUMPERS. "However, I have read an article of April 6, 1985 in the New York Times that casts doubts on whether we are better off. In that article, you are quoted as praising President Reagan's proposal to abolish Federal funds for legal aid as a 'courageous act'.

"I find this a curious definition of courage. To me it takes no courage to deny the poor legal services; medical aid to the sick; food and nutrition for impoverished mothers or college loans for our youth. What takes courage is to tax General Dynamics and General Electric on the enormous amounts they draw from the Pentagon.

"Is that a correct quotation?"

Mr. DURANT. It is not a correct quotation. I made some remarks in front of the past and current presidents of the American Bar Association, and I also, at a recent meeting with all the judges of the eastern district of Michigan to talk about Legal Services and where we could get some help.

My remark was in the context of essentially two ideas. One is from a headline in an article that came out of the Bar Leader by the former president of the LA Bar Association, entitled "Ending the Holy War over Legal Services."

What I said there and what I said in the New York Times piece was that I thought that the President had shown his usual courage in recommending zero funding for the agency because what is necessary at this time—and, by the way, I supported our $305 million budget request that is before this committee—what was appropriate at this time was to try and ask fundamental questions about who and what we are and how best can we do what Congress wants us to do; that given the tumultuous history of the Corporation, that it was important, I thought, that we begin the debate. It has been going on since that speech at the Bar Association, and frankly, after that I had a number of people come up to me and say, "That is precisely what is needed, this kind of debate," and the Reagan proposal, in fact, stimulates that debate to take place in a way that it might not otherwise take place.

Even Senator Kennedy, at his Hofstra speech recently made the point that an unexamined program may not always be a good program and that we need to take some time to look at the roots of what it is that we are doing.

In a recent history of Legal Services that has been published by Alan Houseman and John Dooley, Alan, who is a very candid man and a very thoughtful man, made the point that very different ideas exist about what Legal Services is about and what the traditional notion of legal aid is about.

As I talk to different people, both around the country and on the Hill and in other places, in some ways, there is a different sense as to what, in fact, we really should be doing.

I don't back away from the remark. I think the President has allowed an important debate to go on and that is to determine how best do we take care of the legal needs of poor people in this country.

DISPUTE RESOLUTION ALTERNATIVES

I was visiting the Harvard Law School 3 weeks ago, and part of this came out in conversations I had with both faculty members and also with some students. I think the whole question comes down to maybe two parts: How do we empower people who have grievances to be able to obtain redresses for them? What is the most effective way of doing that?

In my opening remarks when I was elected Board Chairman, I said that I was committed to very professional ends about representation for poor people, because I have represented them all of my active professional life; I know what is on their minds; I know what kinds of problems they have; and the question is how best to represent them.

Senator Rudman made the point just before you came in about other mechanisms of dispute resolutions. Some have said that we are talking about a second-class justice.

It couldn't be a second-class justice if our whole society is beginning to look at ways to resolve disputes in a more economical, more efficient manner and perhaps a less contentious manner.

John Richard Neuhaus with Peter Berger from Rutgers wrote a book 5 years ago called "Empower Our People," and they discussed the importance of mediating structures in our lives that protect us from all the big institutions out there that, in their own way, are kind of amorphous.

If we are creative and open in the way in which we examine these things, I think we are going to come up with good methods to implement these ideas. As I said, I have thought about this a lot because throughout my whole life, professional life, I have spent a substantial portion of it representing indigent people. Initially, the first 4½ years of my practice was almost exclusively criminal indigent defense.

So I know what some of those particular kinds of problems are like and the question is: How best we can do it? I think that the courage of that proposal is that, as Senators who have lots of things and responsibilities come down on you and lots of issues you have to deal with would understand, it is oftentimes hard to step back and look at what it is that we are doing.

I think that that is what we now, to some extent, have the luxury to do. That is what I intended by my remark. That is maybe a longer answer than you wanted.

PRO BONO WORK FROM ATTORNEYS

Senator BUMPERS. Really, I think Senator Hollings' motivation for the question is—and I think your answer is an appropriate one—what all of us who believe in Legal Services for the poor want to know is are you really committed to the proposition that the poor are entitled to legal services and the proposition that it can't be all done by pro bono work from lawyers?

Mr. DURANT. I do not think it can all be done by pro bono work, although to ignore that resource would be foolish.

Senator BUMPERS. I agree. We have got one of the best pro bono programs in Little Rock of anyplace in the country.

Mr. DURANT. In fact, when I was with John Shepard, the president of the ABA in Charlotte, NC, about 1½ months ago, part of that time was at a pro bono conference to try and encourage, with the existing staff programs, ways to leverage those resources.

I am deeply committed to legal services for poor people. I mean, their problems, in some ways, may not be of the same dollar amount as other kinds of problems, but that does not at all minimize the impact on their own lives of those problems.

But I am committed also to examining new ideas. I am in this, some people wonder why, but I am in this with an open heart and an open mind to try and determine how can we improve what it is that we are doing. Can we rationally look at, in the sense of fundamentals and in terms of asking questions, our services and how we achieve our purposes?

Senator BUMPERS. I practiced law in a small town, a poor rural community, and did a lot of pro bono work. A lot of it is unintentional. [Laughter.]

Mr. DURANT. Yes. [Laughter.]

Senator BUMPERS. But there were many occasions when people came to me with problems; they were legitimate problems that ought to have been redressed in a court of law. And they were cases where there was no contingency fee possible, where there was no possibility of getting a fee out of the opponent. There was just no way to get a fee. It was some specific performance case or something like that.

JUDICIAL PROCESS AND THE POOR

I know $300 million is a drop in the bucket to what we could spend, and I think a lot of the frustrations in the ghettoes and the poor areas in this country is a direct result of not only cynicism toward the system and the judicial system, but I don't mind telling you that I didn't sign the letter yesterday. But when they see a woman soliciting in Washington, DC getting 30 days and they see EF Hutton, who padded $2.5 billion worth of checks getting a slap on the wrist, who wouldn't be cynical about the judicial system of this country?

We all know that poor people, minorities, really do suffer in our judicial process, and to redress it, I don't think $300 million is enough. But with these budget constraints, we don't have much choice because it is an either or situation.

Mr. DURANT. I think it is always important, Senator, to focus on clients. In other words, that part of the debate is whether or not one represents the poor as a class or as individual poor people. I am very active in politics because I like dealing with people. It is a relational kind of business, if you will.

I tend to like things that focus on individuals, not collectives, and I think the Board feels the same way; how can we enhance accountability to, and increase the opportunities of individual clients to make choices in terms of what it is that they want. I think those are going to be some of the focuses and questions, the time constraints I will want us to ask.

Senator BUMPERS. Thank you, Mr. Durant.

Thank you, Mr. Chairman.

RELATIONSHIP WITH BOARD

Senator RUDMAN. I would observe for the record that last November or December, Mr. Durant came to my office and I laid out a list of things that I thought needed to be done to restore the working relationship between LSC and Congress and particularly this committee.

I will say for the record that he and his Board members have accommodated those suggestions in a very forthright way. That is why I worked very hard with him to try to get this Board reported out and confirmed. They were reported out, all but two, unanimously this morning, which tells me a great deal about the background investigations done by people on both sides of the aisle who are concerned about this.

So I am glad that the Senator from Arkansas asked you that question, because I think that your answer to that question, frankly, confirms what I have observed over the last couple of months. I hope that working together rather than working as we have been for the last 3 years, we can improve the basic delivery of legal services to the poor. I have felt, as most of my colleagues do, that if we don't have adequate legal services for the poor than quality depends on how big your bank account is. That is your job, and we are going to look forward to progress.

Mr. DURANT. Thank you.

Senator BUMPERS. Thank you.

Senator RUDMAN. I have a number of questions fairly technical in nature. I think they could be answered fairly briefly. We have furnished you with a number of these prior to the hearing because we wanted you to be able to respond to them.

SUPPORT CENTERS

First, last year, we were told that LSC was studying the roles of the National and the State support centers. Is the study completed yet? If not when, and if so, what are the recommendations?

Mr. DURANT. We are studying National and State support. A final study is not complete, but hopefully one of the things this Board is going to want to look at is some of that work to determing whether it is a fair assessment of the support centers' work. I don't know of any particular release date in terms of the study.

Mr. OPSUT. I would hope soon, but we are still working on that.

PRIVATE ATTORNEY INVOLVEMENT

Senator RUDMAN. Keep the committee posted on that, please. According to the justification you have supplied, every recipient must allocate 12.5 percent of its budget to stimulate the involvement of private attorneys. You have described a good deal of that this morning.

Are you relatively satisfied that the objective which you have set here is now being met, generally, across the country?

Mr. DURANT. Generally, yes. We are in the process right now of hearings on the 12.5 under our Operations and Regulations Committee chaired by Michael Wallace. That has not been finally reported to the Board for action, but they are reviewing its successes and its failures.

OFS REORGANIZATION

Senator RUDMAN. We were concerned in the original justification that about 49 positions were being eliminated in the field service offices in nine cities which would leave no employees in eight offices. We understand you are going to go to a four-office plan?

Mr. OPSUT. A four office plan is in the staff proposal, and that was submitted to the Audit and Appropriations Committee at their last meeting. There was no action taken on that. We are soliciting comments from our regional office people about those proposals. But it will be on the agenda of the next meeting.

ELDERLAW GRANTS

Senator RUDMAN. All right. As you know, we had a new program established last year to improve the quality of delivery of legal services for the elderly in this country. Have the grants been made yet? Are they in the process of being made? What is your timetable?

Mr. DURANT. Mr. Broccoletti, between May 7 and and I think May 23, is conducting a review regarding particular types of projects and I think his department is going to make recommendations on or about May 23 as to which grant applications should be funded.

Mr. OPSUT. That is right, and we have received a significant amount of applications for those grants.

Senator RUDMAN. If the projects funded by the program will run for up to 2 years, is there any need to provide additional funding for the program in fiscal year 1986? Would it make sense to wait until fiscal year 1987 before providing new funds for that program?

Mr. OPSUT. We are going to look into the elderly at the institionalized level, as well, and we will allocate about $1 million for that specific area. At least that is what my indication is from the Board; it goes to specifically address the elderly question.

Senator RUDMAN. I am not sure just exactly when we are going to mark this, but I would like, as soon as you have made decisions, to know about that.

Mr. OPSUT. As you know, the $2 million in grants in this year's budget have to be made by July 1.

Senator RUDMAN. That is correct. Right.

FUNDING FORMULA RIDER

The rider provision requires that only a confirmed LSC board can change funding priorities. I assume that we should just let that expire because you hopefully will get confirmed. I am going to talk to the leadership on both sides of the aisle to see if we can get this up and voted on. You would not have any change?

Mr. DURANT. I don't think there would need to be a change. I don't know technically from the standpoint of——

Senator RUDMAN. It becomes moot.

Mr. DURANT. It might become moot.

CLASS ACTIONS

Senator RUDMAN. All right. Are any changes being contemplated either within the Board of Directors or among the staff of the Corporation in the existing statutory establishment class action policy?

Mr. DURANT. No; in fact, the steps outlined in the rider are probably very prudent and judicious, and we are not contemplating any changes at this point.

TRAINING FUND RIDERS

Senator RUDMAN. All right. I want to talk about language governing training funds. First, existing law, enacted as part of the compromise 2 years ago, consists of a restriction on the use of training funds promoted by Senator Hatch coupled with qualifying language insisted on by Senator Eagleton.

The budget proposal recommends deleting the Eagleton language and retaining the Hatch language.

Mr. DURANT. Mr. Daugherty, can you address that?

Senator RUDMAN. Can you tell me what is going on?

Mr. DAUGHERTY. I think the major feeling, Senator, was there was really no need for the exception; that there were few occasions in which there was any need to be training attorneys with respect to advocating public policies, political activities, labor or antilabor activities, boycotts, picketing, or strikes. That is the area in which training is prohibited. We find it difficult to envision the training the exception is intended to permit.

We are concerned to the extent that it calls for training attorneys to advise clients about the legislative process. That would seem to be suggesting a loophole where the funds are to be used to train clients to go out and lobby while you have been very, very explicit as to the lobbying that we are not to be doing.

Senator RUDMAN. Let us look into that over here and see if we want to talk to you about that.

Mr. DURANT. All right.

FISCAL YEAR 1984 CARRYOVER

Senator RUDMAN. The Corporation has carryover funds from fiscal year 1984 in the neighborhood of $5.8 million. I believe you acknowledge a carryover of about $5.4 million. You told us that the account that Senator Bumpers and you discussed earlier contains some-odd $400,000.

Mr. DURANT. That is the difference.

Senator RUDMAN. Is that the discrepancy?

Mr. DURANT. Yes.

Senator RUDMAN. What are you going to do with those funds?

Mr. DURANT. We have had hearings at our last meeting in April where we took testimony and recommendations from both field programs and from staff. We are looking into some sort of spread that will include existing programs. We are looking at projects of the sort that Senator Lautenberg is talking about that would be experimental and would provide some basis for comparison with what it is that we are now doing.

I think it is also important that part of this goes into a legal needs study; to take a fundamental look at how previous studies have been done and whether or not they fully address the dilemma, what I would characterize in the board meetings, as the difference between legal needs and legal wants.

Any time you have a program, the demand for it may be in excess for what the accountable demand might be. It is a matter that must be studied. We will allocate a portion of the carryover funds for that purpose.

We also want to look to some extent in the migrant area in terms of studying some of the questions that have come up as a result of the budget proposal regarding the migrant programs.

But we are going to try and have a fairly good blend of uses for the carryover.

Senator **RUDMAN**. When will that decision be made?

Mr. **DURANT**. Hopefully at the next Board meeting.

Senator **RUDMAN**. Will you inform the committee as to the precise allocation?

Mr. **DURANT**. I will do that.

[The information follows:]

Letter From Thomas J. Opsut

May 29, 1985

The Honorable Warren Rudman
530 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Rudman:

During the April 24 and May 5, 1985, Appropriations Subcommittee hearings, you requested to be informed of any decisions the Board of Directors made regarding expenditures of the FY '84 carryover funds.

On May 24, 1985 the Board met and considered the staff recommendations for allocating those funds. The Board reduced the staff request for new Program Development funds by $405,950 and cut the request for new computers by $50,000. These funds were transferred to the basic field programs. The Board then voted 10-0 to allocate the carryover as follows:

--To cover binding obligations to grantees and contractors which were incurred in FY '84 but expensed in FY '85 due to differences in the grant and fiscal years	$1,584,377
--For basic field programs, to be divided equally among those funded below the national per capita average and supplimental field programs	1,155,080
--For monitoring	1,000,000
--Program development	959,340
--Special Studies	300,000
--Corporate data management capabilities - upgrading and expansion	216,430
--Litigation expenses - set aside	170,000

I trust this information is helpful. If I can be of further assistance please do not hesitate to contact me.

Very truly yours,

Thomas J. Opsut

Thomas J. Opsut
Interim President

MEMORANDUM

DATE: May 29, 1985

TO: Board of Directors

FROM: David Gessner, Budget Director

SUBJECT: Allocation of ~~FY~~ 1984 Carryover Funds

Attached are two schedules showing the final allocation of ~~FY~~ 1984 Carryover. These schedules reflect the allocations made by the Board on May 24, 1985, and are in the same format as those in your Board Books.

Each of 184 Basic Field grantees and ten DSS grantees will share a total of $1,155,510 in uncommitted funds, for an allocation to each of $5,956. DSS grantees are funded under budget line I.C.3. (Supplemental Field Programs).

Attachments

SOURCE AND APPLICATION
FY 1984 CARRYOVER FUNDS

ATTACHMENT 1

APPROVED
24-May-85

	FY 1984 BUDGET	SOURCE OF FY 1984 CARRYOVER	APPLICATION OF FY 1984 CARRYOVER	AMOUNT DIFFERENCE	PERCENTAGE DIFFERENCE
I. DELIVERY OF LEGAL ASSISTANCE	$250,751,493	$2,773,727	$2,832,312	$58,585	.0%
A. FIELD PROGRAMS	$240,372,163	$313,727	$1,346,844	$1,033,117	0.4%
1. Basic Field Programs	225,499,398	235,186	1,267,943	1,032,757	
2. Native American Programs and Components	6,323,563	78,721	78,721	0	
3. Migrant Programs and Components	8,549,202	(180)*	180	360	
4. Reserve for Special Adjustments	0	0	0	0	
B. PROGRAM DEVELOPMENT	$4,261,714	$2,460,000	$1,425,908	($1,034,092)	-24.3%
C. SUPPLEMENTAL SERVICE PROVISION	$6,117,616	$0	$59,560	$59,560	1.0%
1. R. H. Smith Fellowships	4,717,306	0	0	0	
2. Summer Internships	85,583	0	0	0	
3. Supplemental Field Programs	1,314,727	0	59,560	59,560	
II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	$18,546,391	$874,980	$866,825	($8,155)	-0.0%
A. TRAINING AND TECHNICAL ASSISTANCE	$1,510,907	$470,642	$456,299	($14,343)	-0.9%
1. Training Development	142,573	1,903	0	(1,903)	-
2. Technical Assistance	429,150	329,154	320,142	(9,012)	
3. Client Training and Involvement	351,429	3,423	0	(3,423)	
4. Regional Training Centers	588,756	136,157	136,157	0	
B. OTHER SUPPORT	$17,035,484	$404,338	$410,526	$6,188	.0%
1. National Support	6,686,222	0	0	0	
2. State Support	7,378,882	245,947	245,947	0	
3. Clearinghouse	867,236	0	0	0	
4. National Clients Council	598,735	161,485	161,485	0	
5. DALR Grants	733,503	0	0	0	
6. Program Emergency Fund	770,906	(3,094)*	3,094	6,188	

	FY 1984 BUDGET	SOURCE OF FY 1994 CARRYOVER	APPLICATION OF FY 1994 CARRYOVER	AMOUNT DIFFERENCE	PERCENTAGE DIFFERENCE
I. CORPORATION MANAGEMENT & GRANT ADMINISTRATION	$11,404,615	$1,736,430	$1,686,000	($50,430)	-0.4%
A. CORPORATION MGT. & GRANT ADMIN.					
1. Board of Directors	129,335	74,228	0	(74,228)	
2. Executive Office	775,000	123,875	300,000	176,125	
3. Office of Compliance and Review	453,154	195,895	0	(195,895)	
4. Office of the General Counsel	736,751	(260,625)	170,000	430,625	
5. Audit Division	447,500	178,580	0	(178,580)	
6. Office of Information Management	700,235	(138,144)	216,000	354,144	
7. Office of Human Resources	691,960	244,693	0	(244,693)	
8. Office of the Comptroller	415,084	35,631	0	(35,631)	
9. Division of Administration	1,426,546	103,086	0	(103,086)	
10. Office of Field Services	2,037,142	523,785	1,000,000	476,215	
11. Regional Offices	3,591,908	655,446	0	(655,446)	
12. Unallocated Reserve	0	0	0	0	
OTAL	$280,702,499	$5,385,137	$5,385,137	$0	

DUE TO OVERAPPLICATION OF FUNDS IN 1994, A BOOKKEEPING TRANSFER IS BEING MADE. THIS IS NOT A CASH APPLICATION OF FUNDS.

D. GESSNER
29-May-95

TT I: p. 2/2

LEGAL SERVICES CORPORATION
APPROVED ALLOCATION OF 1984 CARRYOVER
FISCAL YEAR 1985

ATTACHMENT II

APPROVED
24-May-85

	(1) FY 1985 FUNDING BASE	(2) PROGRAM CHANGES	(3) COMMITTED FY 1984 CARRYOVER	(4) UNCOMMITTED FY 1984 CARRYOVER	(6) APPROVED FY 1985 BUDGET AS OF 10/1/84
I. DELIVERY OF LEGAL ASSISTANCE	$272,291,053	$0	$717,552	$2,114,760	$275,123,370
A. FIELD PROGRAMS	$263,676,639	$0	$250,894	$1,095,950	$265,023,483
1. Basic Field Programs	247,024,024	20	171,993	1,095,950	248,291,987
2. Native American Programs and Components	6,897,148	12	78,721	0	6,975,881
3. Migrant Programs and Components	9,698,417	5	180	0	9,698,602
4. Reserve for Special Adjustments	57,050	(37)	0	0	57,013
B. PROGRAM DEVELOPMENT	$1,829,000	$0	$466,658	$959,250 *	$3,254,908
C. SUPPLEMENTAL SERVICE PROVISION	$6,785,419	$0	$0	$59,560	$6,844,979
1. R. H. Smith Fellowships	5,232,328	0	0	0	5,232,328
2. Summer Internships	94,927	5	0	0	94,932
3. Supplemental Field Programs	1,458,164	(5)	0	59,560	1,517,719
II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	$21,425,942	$0	$866,825	$0	$22,292,767
A. TRAINING AND TECHNICAL ASSISTANCE	$1,523,910	$0	$456,299	$0	$1,980,209
1. Training Development	160,384	0	0	0	160,384
2. Technical Assistance	320,768	0	320,142	0	640,910
3. Client Training and Involvement	389,769	0	0	0	389,769
4. Regional Training Centers	652,989	0	136,157	0	789,146
B. OTHER SUPPORT	$19,902,032	$0	$410,526	$0	$20,312,558
1. National Support	7,415,520	171	0	0	7,415,691
2. State Support	8,183,732	180	245,947	0	8,429,859
3. Clearinghouse	961,329	0	0	0	961,329
4. National Clients Council	664,103	0	161,485	0	825,588
5. CALR Grants	675,348	(351)	0	0	674,997
6. Program Emergency Fund	0	0	3,094	0 **	3,094
7. Special Elderly Programs	2,000,000	0	0	0	2,000,000

[illegible]

BEST COPY AVAILABLE

	(1) FY 1985 FUNDING BASE	(2) PROGRAM CHANGES	(3) COMMITTED FY 1984 CARRYOVER	(4) UNCOMMITTED FY 1984 CARRYOVER	(5) APPROVED FY 1985 BUDGET AS OF 10/1/84
I. CORPORATION MANAGEMENT & GRANT ADMINISTRATION	$11,283,000	$0	$0	$1,686,000	$12,969,000
A. CORPORATION MGT. & GRANT ADMIN.					
1. Board of Directors	158,300	0	0	0	158,300
2. Executive Office	501,500	0	0	200,000	701,500
3. Office of Compliance and Review	303,400	0	0	0	303,400
4. Office of the General Counsel	761,600	0	0	170,000	931,600
5. Audit Division	655,400	0	0	0	655,400
6. Office of Information Management	723,100	0	0	216,000	939,100
7. Office of Human Resources	374,000	0	0	0	374,000
8. Office of the Comptroller	458,600	0	0	0	458,600
9. Division of Administration	2,029,500	0	0	0	2,029,500
10. Office of Field Services	1,712,200	0	0	1,000,000	2,712,200
11. Regional Offices	3,405,400	0	0	0	3,405,400
12. Unallocated Reserve	200,000	0	0	0	200,000
TOTAL	$305,000,000	$0	$1,584,377	$3,800,760	$310,385,137

APPROXIMATELY $300,000 OF THE 1984 CARRYOVER IS RECEIVABLES.

* REPRESENTS BOOKKEEPING TRANSFER ONLY. NO FY 1985 PROGRAM ACTIVITIES ARE TO BE CARRIED OUT.

D. GESSNER
29-May-85

[illegible] p. 2/2

FISCAL YEAR 1986 CARRYOVER

Senator RUDMAN. You anticipate a carryover of about $5 million now at the end of 1986; is that correct?

Mr. GESSNER. Senator, in the budget submission, we based that estimate on a very light set of facts as to what our carryover might be at the end of 1985–86.

We thought it was prudent to estimate some amount of carryover.Yet when the budget was prepared, we really had no idea what amounts, in fact, would be carried over. We have historically carried over some amount of money each year, and for that reason, we estimated $5 million.

Senator RUDMAN. It is about 1.5 percent of the total appropriation. Is that historically accurate as to what has been done?

Mr. GESSNER. It has ranged from that low up to a high of 3 or 4 percent.

Senator RUDMAN. I would just say that judging by the temperature of the people who are concerned with this up here that because of the fact that these appropriations have been reduced substantially over the last several years, and certainly nobody thinks that demand has gone down, I would think you would try to keep that carryover figure very low.

Mr. GESSNER. That certainly has been a policy. One situation which gives rise to carryovers is timing. In many instances, grants are authorized on a calendar year basis and prorated on a fiscal year basis, so we run into some accounting questions.

Senator RUDMAN. You might be prepared at some point to give us a breakdown of this funding situation.

Mr. GESSNER. OK.

FISCAL YEAR 1986 FUNDING FORMULAS

Senator RUDMAN. In your proposed fiscal year 1986 budget, you are proposing to eliminate the statutory formula for distribution of funds to the field programs. What plans are there for the allocation? Is it going to be allocated by formula or by other criteria? There is great concern about what is going to be done in the future.

Mr. DURANT. Dennis, do you want to explain that?

Mr. DAUGHERTY. That is on the agenda of our Audit and Appropriations Committee at the end of this month. I think it is fair to say that there is a consensus that the funds should be allocated according to formula. The members of the board would like to have their crack at establishing a formula.

There are two proposals, major proposals that are before them. Both of them would guarantee our grantees all of the funding that they had in 1985, but they have different proposals as to how to allocate the $11.3 million increase for the basic field programs that we hope to accomplish by shifting funds from other categories.

Mr. Mendez wants to use the increase to raise the funding of the lowest-funded programs in the country. We have got 110 of them now that are at $7.80, including New Hampshire Legal Assistance. He would like to bring that up to $8.41.

Mr. Uddo has a proposal akin to that of the Project Advisory Group which would provide small increases to every program that is funded below $13.57.

Those are the proposals that are before the Board. I expected one or the other of them will be adopted at the next meeting.

Senator RUDMAN. I would just observe that if there is one hot button for what you are going to be doing that is hotter than all the rest, it is this one.

Mr. DURANT. They all seem hot.

Senator RUDMAN. I think this is a bit hotter. Obviously, it is a very sensitive issue. I would just make the observation that whatever is done when the Board meets you might just pass onto them these thoughts. That I think that if the decision is taken based on logical and reasonable and provable facts as opposed to philosophy, I think you are going to have a better time flying with it.

If it is taken just based on philosophy, the airplane is going off the end of the runway. That is the best way to invite what I will impolitely characterize as further meddling by the Congress, which I have been trying to discourage, as you know.

I hope you will look very closely at that. I think that they will recognize that whatever you do at that Board meeting, inevitably it is going to be looked at up here. I think it needs to be based on logic and need and no other criteria, so I would give you that advice.

Mr. DURANT. I appreciate that.

GRANT APPLICATIONS

Senator RUDMAN. Mr. Opsut, in your testimony, you objected to the fact that grantees are amending their grant applications with the statement that they will only comply with the Corporation's requirements and actions to the extent that the Corporation requirements and actions are legal. The grantees are simply hedging their compliance confirmation forms.

What is at issue here?

Mr. OPSUT. We had some grantees that, because of a lawsuit, that was in progress, amended their grant applications based on the issue involved in that lawsuit. That lawsuit has now been resolved, and I think the question about that has become moot based on the settlement of that lawsuit.

Senator RUDMAN. You are not getting any more of that type of language?

Mr. OPSUT. That was for this past grant year, unless we have another lawsuit.

Senator RUDMAN. All right. We covered the question of holding appropriated funds with interest.

We have got some more questions about the private bar and the contractual arrangements for the record.

Mr. DURANT. That is fine.

Senator RUDMAN. We have talked about those a great deal; probably about a half a dozen questions on that.

Mr. DURANT. That is fine. I will submit the answers.

LAW SCHOOL GRANTS

Senator RUDMAN. On the law school clinic grants, what criteria, other than cost per case, were used to allocate grants? If you can't answer that right here, I would like it for the record.

Mr. OPSUT. We can supply it for the record. Senator, on a previous question of yours, we do have the breakdown under the Mendez, the Uddo, the current funding formula, and the PAG proposal. Do you have that?

Senator RUDMAN. We do have that.

Mr. OPSUT. We would like to keep you advised of that.

Senator RUDMAN. Right. I will ask Tom Polgar from my staff who works with me on this to talk to some of the other members about this concern. I am trying to get rid of a lot of work. I have a lot of other things to do. I would like to hit your ship with a bottle of champagne and say bon voyage. [Laughter.]

Mr. DAUGHERTY. With respect to the law school clinics, as you know, this was an experimental program. One of the principal objectives was to examine various types of relationships between Legal Services programs and law school clinics to see which relationship is most productive in terms of their cases. We were very concerned about trying to build cooperative relationships there.

PRESIDENTIAL SEARCH

Senator RUDMAN. What is the status of the presidential search?

Mr. DURANT. We have, since the committee as you know was established in January, received in excess of 200 applications. We are in the process now of going through a lot of those applications and the material that was submitted with them and checking on references of some of the people.

We hope to have a decision, hopefully by June, the latter part of June or early July.

Since we have such a broad-based Board, we have made the committee essentially a committee of the whole so that we have input from all viewpoints that are represented by the Board and hopefully, we will have a decision by the end of June or early July.

Senator RUDMAN. I think that it is absolutely vital that this be dispensed with. The fact is it has not been and it is not going to be.

I hope that whoever comes in will be the kind of person that you are, Mr. Durant; somebody that may disagree with some of the programs and how they have been run, but who basically believes there is an important role in the Legal Services Corporation and the delivery of services to the poor. If they don't believe that, then they will have the same kind of rocky road up here that Mr. Bogard had. That was not rocky; that was a road filled with crevices. [Laughter.]

I hope the Board will really look carefully to get someone who believes that, as you, I think, very articulately stated in your answer to Senator Bumpers.

I hope you will do that.

SUBMITTED QUESTIONS

I will have a few other questions that we will submit to you for the record.

Mr. DURANT. That is fine.

[The following questions were not asked at the hearing, but were submitted to the Corporation for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

COMMERCIALIZING LEGAL SERVICES

QUESTION: Since you began sitting last December, meetings of the Board and of the Audit & Appropriations Committee have been devoted largely to presentations about radical changes to the current program. I understand these changes include:

-- Putting all grants out for competitive bidding each year;

-- Voucher Systems;

-- Forcing support program to "sell" their services to the clients; and

-- Copayments for services by clients.

- Do you or the Board intend to pursue any of these proposals?

ANSWER: I do not believe that this question accurately characterizes the subject matter discussed at meetings of our Board or Audit and Appropriations Committee. I do not recall any presentations on "Copayment for Services by Clients" or "Putting All Grants Out for Competitive Bidding Each Year." We did hear a presentation from the Chairman of the ABA Committee on Delivery of Legal Services, Van O'Steen, and an economic consultant to that committee, concerning a study of voucher systems which his committee and the ABA asked LSC to support. We decided to cosponsor that research project with the ABA with the first demonstration project to be undertaken in San Antonio, Texas in cooperation with St. Mary's Law School. Our efforts, I might add, have the full support and cooperation of the Legal Services program in Bexar County.

One of the ideas you mentioned has been the subject of active Board discussion. Pepe Mendez, Chairman of the Audit and Appropriations Committee, and I have sought comment from the staff and directors of our support centers on their sale of support services to LSC field programs and others in need of specialized legal research, publications, etc. Our support centers provide service, not to individual clients, but to the attorneys and paralegals employed in our field programs. We asked Burton Fretz and Leonard Goodman, among others, if the services provided might not be more responsive to field demand if some portion of the center's budgets wasn't derived from the allocation decisions of field program attorneys, rather than LSC staff. Mr. Mendez asked the question at his February 21 meeting, specifically in the context of the first budget proposal adopted by our Board, which would have reduced direct LSC funding to support centers, while increasing that to field programs. It should be noted that the Board decided, subsequent to those hearings, not to propose a reduction in state support funding in FY '86 nor to propose a reduction in direct LSC funding of national support centers greater than 10%.

All of the "radical ideas" you enumerated are ideas which would introduce some of the disciplines of the free market to the allocation of scarce legal services dollars, enhancing the role of the "consumer" in the selection of providers or service priorities. We don't have enough information at this point to conclude that any of these should be implemented except on an experimental basis. I do believe that they and other ideas for improving the quantity and quality of legal services and the degree of client satisfaction should be the subject of full and good faith exploration by LSC, its recipients, the bench and the bar.

QUESTION: Do you believe in forcing programs to undergo competitive bidding each year?

ANSWER: I am not prepared at this time to advocate that every legal services program be subject to competitive bidding every year. We have no plans to require that every program undergo competitive bidding in 1986. I do think that some form of competition should be introduced into the grantmaking processes of the Corporation to give programs incentives to improve their efficiency, quality and responsiveness to client demand. Indeed the House of Representatives called for such in the last LSC authorization bill to have passed either house of Congress, H.R. 3480, which passed the House in 1981.

QUESTION: It has been advocated that funding to national and state support centers be eliminated and that the centers ought to attempt to "sell" their services to field programs. Is there any reason to believe that concept is remotely workable? If there is a reason, what supporting evidence is there?

ANSWER The proposal which has been discussed would enable national support centers to recoup part or all of the 10% cut by selling certain of their services on an experimental basis. This would not be a drastic change from the present system, which has been frozen into place for years. This is an attempt to develop new ideas for the delivery of legal services.

The proposal would have the Corporation explore the relationship of perceived needs of local programs for support and the resources available to meet those needs. The experiment would provide additional funds to local programs - which they could use at their discretion for any purpose permitted under the Act. Support would, of course, be a permissable purpose. Local programs, at their need, could purchase support services from the centers. Thus the Corporation would be attempting to provide an alternative support delivery system which would, as its most important outcome, be more responsive to the needs of local programs in their delivery of legal assistance to eligible clients. It would also assure that the support centers would be funded (through the fees paid to them by local programs) for the necessary services they provide.

Those who fear any change are likely to call any attempt to change "drastic". Those clients requiring direct representation by field attorneys will not be affected by the fee-for-service arrangement, as funding for the field is being increased. At the same time, the system is designed to ensure that those field attorneys who do need back-up services will be able to obtain them for the truly needy client.

COMPETITIVE BIDDING

QUESTION: Do you believe that LSC should utilize competitive bidding for all new grants made to providers? Should competitive bidding be used for all refundings?

ANSWER: I think competitive bidding at times is the most likely means by which to get the best product and maximum resources.

QUESTION: Under what circumstances, would you not use a competitive bidding process?

ANSWER: I do not know.

QUESTION: Do you believe that an existing Legal Services program should be defunded or denied refunding when there is no allegation of a violation of the Act or Regulations, when the program has been found to provide economical and effective services, and when the other program being considered has never actually developed a track record on serving indigent clients?

ANSWER: It is difficult to envision a circumstance when denial of refunding would be warranted under the circumstances you described. I would want to look very carefully at the basis for the finding that the existing program was economical and effective. If that finding was based upon a comprehensive review of their work, I would be very reluctant to select a competing provider. But such a decision would have to be made in any particular case on the basis of the whole record. What provider has the most experience in serving indigent clients? What is the level of legal competence and experience of attorneys associated with each provider? Which provider has the best delivery system for providing service in all parts of the service area? Which provider has the best plan for leveraging the involvement of the total membership of the local bar in legal services delivery.

QUESTION: Don't you think that prior to defunding or denying an application for refunding any new potential recipient should have to demonstrate that it can provide more economic and effective services than an existing recipient?

ANSWER: Any decision on refunding has to give great weight to the advantages accruing to an organization with experience in serving the area. To be funded in lieu of an existing provider, a new applicant would have to demonstrate qualifications that offset the experience of the existing provider. Economic efficiency would certainly be the primary criteria in our decisionmaking.

QUESTION: If you implement a competitive bidding process, what provisions will you make for existing clients with existing cases? Have you considered the ethical questions raised by a defunding based on competitive bidding?

ANSWER: We would certainly want to provide for the orderly completion of existing cases. Section 1625.16 of the LSC regulations authorizes termination funding to former recipients when it is necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibilities to its present clients. Client preferences, the capabilities of the current recipient in the absence of full LSC funding, and the reasons for the denial of refunding would have to be taken into account in determining whether completion by the previous grantee, transfer to the new grantee, or referral to outside counsel is the most appropriate way to handle any particular case.

LSC LANGUAGE REQUESTS

QUESTION: Is the language relating to the Western Center on Law and Poverty moot, or does LSC have plans to defund the Center for the charges made in the original complaint?

ANSWER: LSC has no plans to defund the Center.

QUESTION: How have the revised procedures for defunding grantees which were established at the beginning of FY 1984 worked?

ANSWER: In some respects, preliminary indications are that the procedures are working relatively well.* However, insofar as the procedures allow for a situation such as the NCC denial of refunding to occur, there is definitely room for improvement.

In late 1983, LSC conducted a review of NCC and discovered a number of significant violations of law, guidelines and instructions issued by the

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* There still remains the question of whether such expensive, time-consuming efforts should be required of LSC in order to do nothing more than not renew a contract. If one party to a contract is dissatisfied with the other party's performance, the dissatisfied party should be able to decline to renew the contract without persuing such involved and expensive procedures.

Corporation, as well as one or more of the terms of its grant. These included serious financial abuses such as the expenditure of approximately $10,000 during one nine-month period alone to rent cars for the personal use of the Executive Director in commuting to and from his home and office; numerous improper salary advances; improper consulting fees; improper travel expenditures; and various unauthorized contracts for goods and services. In their most favorable light, they showed gross negligence in the handling of public funds and a total insensitivity to the needs of the client.

At worst, these financial abuses showed a continuous and deliberate conversion of public funds for private purposes in violation of law and public policy.

Based on the evaluation teams report, the Corporation also found that NCC had generally failed to maintain adequate records, which made it impossible for the Corporation to effectively monitor both the purpose of NCC's expenditures and the quality of its performance under its grant. This problem was exacerbated by NCC's refusal to provide the review team with access to various files, in violation of its express commitment under the grant to "cooperate with all...evaluation activities undertaken by the Corporation, and give ...access to all records, books and papers or documents" requested by the Corporation. In addition to these legal and contractual violations, the Evaluation Report revealed that NCC's performance was seriously deficient in areas such as training and technical assistance which are the primary objectives of the grant, as well as the main activities in which NCC claims expertise.

As a result of the Review Team's findings, on January 4, 1984, LSC notified NCC of its preliminary determination to deny refunding to NCC for 1984 in accordance with 45 CFR 1625. In particular, the letter states as follows:

> Overwhelming evidence has forced us to conclude that NCC is in noncompliance with Section 1625.3(b) by failing to comply with provisions of the law, rules, regulations, guidelines, instructions and grant conditions issued by the Corporation.
>
> Furthermore, NCC has failed to utilize public funds in a prudent or economical and effective manner. The Board of Directors of NCC has failed to exercise its powers to fulfill its fiduciary responsibilities and appropriate public stewardship role. Therefore, the fiducial relationship between the Legal Services Corporation and NCC has been breached.
>
> We are compelled to initiate this action as the result of a review of NCC's operations conducted in October and November 1983, which disclosed the following deficiencies.

The letter also advised NCC of its right (under 45 CFR 1625 and Public Law 98-166) to request a review of LSC's preliminary determination to deny it refunding for 1984.

NCC requested such an administrative review and therein generally contested the Review Team's findings. The administrative hearing was presided over by Richard S. Gebelein, Esq., an independent hearing examiner, and was held from March 5, 1984, through April 19, 1984. It consisted of twenty (20) full days of testimony covering almost 5,000 pages of transcript. Seventeen witnesses testified at the hearing and thousands of documents were introduced. (A detailed summation of the facts in the case is contained in LSC's 435-page post hearing submission.)

The hearing was followed by lengthy post-hearing submissions and motions of various sorts, and the independent hearing examiner's forty-two page Opinion and Recommended Decision was issued on May 1, 1985.

To date, the process in this case to not renew a contract has taken over sixteen months, and has still not reached a final resolution. The law required continued funding during those sixteen months.

There has been no in-depth study or analysis of the degree of effectiveness and efficiency obtained in following the current de-funding procedures. However, one could easily be conducted and we could thereafter report back to the Committee with possible specific recommendations.

QUESTION: What would be the impact of these procedures in terms of the FY 1986 request, which implies a significant reduction in the grants received by a large number of the recipients?

ANSWER: There should be no impact. The FY '86 budget proposal does not call for the de-funding of any grantees. An across the board reduction in general programs, i.e. - national support, migrants, is not the equivalent of a defunding of a specific grantee, and therefore these procedures are not applicable. (See the attached memo from our General Counsel).

MEMORANDUM

TO: W. Clark Durant, III, Chairman
Legal Services Corporation Board of Directors

FROM: Richard Bagenstos
Acting General Counsel

DATE: May 21, 1985

SUBJECT: Reduction in Funding to a Class of Grantees

This memorandum responds to a request for an opinion concerning the impact of denial of refunding procedures in terms of the Corporation's FY 1986 budget request, in which certain classes of grantees would have their funding reduced pursuant to a formula of general application.

Section 1011 of the Legal Services Corporation Act, as amended, provides, in pertinent part:

> (2) financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor or person or entity receiving financial assistance under this title has been afforded reasonable notice and opportunity for a timely, full, and fair hearing. . . .

The proposed reduction of funding in a succeeding grant year could not be considered a "suspension" of funding, which refers to a temporary curtailment of financial assistance to a recipient in whole or in part *prior to the expiration of the recipient's current grant*. Nor could such reduction be considered a "termination" of funding, which refers to a permanent cut-off of financial assistance in whole or in part *prior to the expiration of the recipient's current grant*.

Thus, if §1011 of the Act, and the Regulations promulgated pursuant thereto, are to be involved in this situation, the reduction in funding contemplated in the FY 1986 budget request would have to be considered a denial of an application for refunding. Part 1625 - Denial of Refunding, states in pertinent part:

> §1625.2(a) "Denial of Refunding" means a decision that after the expiration of a grant or contract a recipient:
>
> * * *
>
> (2) Will have its annual level of financial support reduced to an extent that is not required either by a change of law, or a reduction in the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding, or *by uniform application of a statistical formula for the reallocation of funding among members of the same class*, and is more than 10 percent below the recipient's annual level of financial assistance under its current grant or contract. (emphasis supplied)

While the reduction contemplated in the FY 1986 budget request is greater than 10%, it *is* to be apportioned among all recipients of the same class "by the uniform application of a statistical formula for the reallocation of funding among the members of the same class." Hence, such a reduction is not to be considered a denial of refunding under the Regulations promulgated by the Corporation pursuant to the Legal Services Corporation Act, and the procedural rights provided by §1011 of the Act may not be invoked.

BEST AVAILABLE

MIGRANT PROGRAMS

QUESTION: The LSC recommended funding for programs and components serving migrant workers be cut 21.6% from 1984. Apparently, this recommendation was based on information from the Bureau of the Census. I understand that the Census information was misconstrued and that the Census count for the population from which most migrants are drawn has an undercount rate of as much as 18%. Is this accurate? If not, why not? If so, how and will there be an impact on other portions of the LSC budget?

ANSWER: Migrants were counted in the 1980 census data which is used to fund our basic field programs. Thus the migrant population is already funded through basic field programs. Special migrant funding is a second layer of funding for this population. In 41 of 43 instances, migrant units are a component of a basic field program. Because basic field is being increased, these programs will have more monies available to serve all their clients, including the migrant population. There has been some criticism of the 1980 census, that it missed blacks' and hispanics at higher rates than whites, but the undercounts of blacks and hispanics simply cannot be stretched to assume that all migrants were not counted. (See attached response to Representative Kastenmeier on this subject.)

In addition, the census has reported that it counted at least 2 million undocumented aliens in the 1980 census. These aliens comprise a significant proportion of the migrant population, but they are not eligible for service. Nonetheless, our programs have received funding for twice as many ineligibles as have been estimated in the entire migrant population.

An equally valid reason the Board reduced migrant funding is that the number of migrants appears to be steadily declining. The Department of Agriculture indicates that in 1965 there were 466,000 migrants and in 1983 only 226,000. LSC's own 1977 estimate may overstate the number of migrants considerably. Recent studies by the Departments of Argiculture and Health and Human Services record much lower figures than the LSC 1977 study.

ANSWER TO CONGRESSMAN KASTENMEIER

1. The Legal Services Corporation is committed to providing high quality legal assistance to all persons unable to afford legal counsel, including migrant farmworkers. In fulfilling this obligation, the Corporation has conducted a number of studies of the special problems and needs of various groups for legal services. In fact, the LSC Board of Directors has just undertaken a comprehensive review of every facet of the budget to ensure that our funds are distributed equitably to meet the needs of all segments of our clientele. That review found no reason to doubt the findings of the 1007(h) study that migrants have special problems of access to justice. However, that

review did find that a number of assumptions that were made when establishing a migrant funding formula in the 1970s are no longer valid.

The key assumption in the 1978 migrant funding formula was that migrant farmworkers were not counted in the 1970 Decennial Census. The 1970 census was roundly criticized for missing at least 5 million people and according to the Lillisand study of the migrant population "it is not unreasonable to believe that "migrants and their families... were not counted in significant numbers and make up at least 20% of the nation's uncounted". Because LSC believed that migrants were not counted in the 1970 Census data which was used to fund basic field programs, the Corporation commissioned a study of the migrant farmworker population to provide a basis for funding of migrant units. This study yielded an estimate of 1.5 million migrant farmworkers and dependents which was adjusted to approximately 1 million to account for duplication and double counting. Under the formula adopted, migrant programs received funding based upon the number of migrants estimated within their service area adjusted for the length of the migrants' stay. This funding approach has continued to the present.

However, the 1980 Census was much more accurate than the 1970 Census. The Census Bureau believes that its overall error factor has been reduced to approximately 1%. The assumption that migrants are not counted in the census data which is used to fund basic field programs is not valid.

It has been argued that the 1980 Census did not count migrants. However, that is based upon a number of assumptions which fades when closely examined.

The first assumption made is that the Lillisand estimate of 1,000,000 migrants and dependents is correct. The next assumption is that migrants are 50% Hispanic, 30% Black, and 20% White (Lillesand Study p. 76.) Those two assumptions produce 500,000 hispanic migrants, 300,000 black migrants and 200,000 white migrants.

Those who argue that the 1980 Census did not count migrants next state that blacks and hispanics were undercounted at approximately the same rate (5%) in the Census. This rate yields 1.5 million blacks and 730,000 hispanics who were not counted in the 1980 census. If one assumes that no migrants were counted in the 1980 census, then 20% of all uncounted blacks were migrants, but 68.5% of all uncounted hispanics were migrants. This clearly does not make sense. This discrepancy conflicts with the previous assumption that blacks and hispanics were missed at approximately the same rate. [NOTE: This discrepancy becomes even greater if one compares the results with LSC's National Case Service Reports data. These figures which are self reported by the migrant programs show that 79.8% of all migrants cases were for hispanics and only 11% were on behalf of black clients. If these figures reflect the actual ethnic characteristics of the migrant population then there are approximately 800,000 hispanic migrants and only 110,000 black migrants. This would mean that only 7.3% of uncounted blacks were migrants but that 100% of uncounted hispanics were migrants plus at least 70,000 hispanics would have to be counted.]

A final blow to the undercount argument is delivered by a recent Census Bureau's Report, which estimated that over 2 million undocumented aliens were counted in the 1980 Census. Undocumented aliens are not eligible for legal services and by any measure comprise a significant proportion of the migrant farmworker population. Yet, these 2 million aliens are included in the 1980 Census data which is used to fund our basic field programs. Even if no migrants were counted in the 1980 Census, the funding for these 2 million aliens would provide funds for the entire Lillesand migrant population twice over. This is an important point, because in forty-one of forty-three programs, the migrant unit is just one component of a basic field program. If migrants are included in the basic field program poverty count, then these 41 units already receive basic field funding for their migrant units.

The Board's review of migrant funding also found reason to believe that the 1977 Lillesand migrant estimate significantly overstates the current migrant population. Studies by the Department of Agriculture and the Department of Health and Human Services produced estimates of 226,000 and 800,000 and show the migrant labor force is declining. The Board has directed the staff to undertake a comprehensive new study of the migrant population to resolve this difficult question.

More importantly, the study will reassess the current needs of the migrant farmworkers to determine how to best serve their needs. That study is just beginning, so the Board cannot predict what changes, if any, might be made in the delivery system. However, the Board can assure Congress that no changes in the deliver system will be made until the study has been completed, analyzed and fully discussed with Congress.

QUESTION: How much money will LSC and its grantees receive from sources other than this appropriation in FY 1985, in FY 1986?

a. Are those funds subject to the same restrictions there are on the appropriated funds?

b. In general, are they merged into the general operating accounts, or are they targeted for specific projects?

c. Please provide a breakdown for the record of all nonappropriated sources of income in FY 1985 and FY 1986?

ANSWER: LSC grantees will receive almost $85 million in 1985 from outside sources of income. When combined with appropriated funding of $305 million, LSC grantees will receive more money in FY '85 than ever before. The Corporation does not have the figures for FY '86 yet.

Private outside funds received by our programs are subject to the restrictions in the LSC Act but not those contained in appropriations riders. Those funds are not subject to the grass roots lobbying provisions or the alien rider, for example. Public funds, received by our programs from sources other than LSC are not subject to either the LSC Act or appropriations restrictions.

In general, outside funds are held in separate accounts. A breakdown of nonappropriated sources of income for 1985 is attached.

LEGAL SERVICES CORPORATION
1985 FIELD PROGRAM FUNDING BY STATE

STATE	BASIC FIELD	MIGRANT	NATIVE AMERICAN	STATE SUPPORT	OTHER LSC FUNDING	NON LSC FUNDING (1)	TOTAL
ALABAMA	$6,198,716	$39,989	$0	$190,079	$190,859	$54,063	$6,673,706
ALASKA	1,060,122	6	431,490	28,624	9,941	2,352,130	3,882,307
ARIZONA	2,476,107	272,953	2,842,746	121,780	147,308	479,379	6,040,272
ARKANSAS (2)	3,636,933	46,349	0	114,496	370,610	119,001	4,287,389
CALIFORNIA	24,055,574	1,305,060	704,891	1,292,980	1,604,849	9,611,100	38,574,454
COLORADO	2,556,858	180,678	22,771	111,636	117,319	971,085	3,960,347
CONNECTICUT	2,349,110	59,982	12,489	94,435	41,622	2,554,749	5,112,387
DELAWARE	533,510	0	0	0	43,040	525,721	1,102,271
DISTRICT OF COLUMBIA	2,097,905	0	0	0	26,324	1,931,743	4,056,972
FLORIDA	10,037,667	889,729	0	264,187	442,943	3,580,350	15,204,876
GEORGIA	7,272,774	305,893	0	217,960	140,268	1,194,802	9,131,697
HAWAII	909,161	0	101,940	0	17,705	1,404,809	2,433,615
IDAHO	910,978	215,539	51,835	66,802	29,202	74,645	1,349,001
ILLINOIS	9,687,063	253,232	0	210,138	691,626	2,316,201	13,158,260
INDIANA	4,025,733	118,882	0	81,101	338,043	600,054	5,163,813
IOWA	2,670,069	13,632	0	0	91,377	249,241	3,024,319
KANSAS	2,037,804	57,254	0	0	241,148	418,481	2,754,687
KENTUCKY	5,368,218	5,549	0	198,865	313,710	679,702	6,566,044
LOUISIANA (2)	6,723,695	79,067	0	151,674	590,929	119,390	7,664,756
MAINE	1,099,619	197,350	51,425	50,111	116,493	234,597	1,749,598
MARYLAND	3,155,138	100,492	0	71,408	266,881	3,088,950	6,682,869
MASSACHUSETTS	5,330,971	0	0	468,386	382,331	7,047,891	13,229,579
MICHIGAN	7,435,339	447,793	114,541	427,039	68,917	1,460,867	9,954,496
MINNESOTA	3,093,289	324,005	190,671	91,683	132,131	2,469,416	6,301,195
MISSISSIPPI (2)	5,626,399	169,948	66,321	196,070	321,852	134,692	6,515,282
MISSOURI	5,036,455	10,905	0	0	501,278	1,005,914	6,554,552
MONTANA	730,696	109,967	106,417	68,946	3,641	239,135	1,258,802
NEBRASKA	1,494,797	28,174	26,373	0	1,199,291	1,742,614	4,491,249
NEVADA	555,456	5,453	106,094	42,095	5,474	298,334	1,012,906
NEW HAMPSHIRE	676,815	5,550	0	60,856	1,001	464,102	1,208,324
NEW JERSEY	5,551,267	178,765	0	204,317	148,524	3,714,407	9,797,280
NEW MEXICO	1,790,654	98,863	369,898	114,293	89,451	192,169	2,655,328
NEW YORK	18,283,519	253,090	0	754,628	444,708	9,643,931	29,379,876
NORTH CAROLINA	7,269,645	279,035	111,096	229,592	520,546	543,689	8,953,603
NORTH DAKOTA	730,899	0	155,460	90,170	52,650	264,778	1,293,957
OHIO	8,569,569	279,812	0	413,305	256,375	2,663,854	12,182,915
OKLAHOMA	3,356,009	87,246	289,497	35,292	291,095	603,736	4,662,875
OREGON	2,234,821	290,949	147,286	68,698	91,974	1,940,925	4,774,653
PENNSYLVANIA	9,719,567	0	0	178,633	111,080	8,049,155	18,058,435
RHODE ISLAND	763,258	5,550	0	82,728	22,002	974,745	1,848,283
SOUTH CAROLINA	4,325,335	109,967	0	135,599	419,501	146,510	5,136,912
SOUTH DAKOTA	857,544	5,550	744,957	0	32,884	155,232	1,796,167
TENNESSEE	6,262,014	11,815	0	189,728	339,547	575,104	7,378,208
TEXAS	16,344,951	1,716,675	24,971	282,264	276,625	1,674,270	20,419,756
UTAH	1,133,146	39,989	35,633	31,859	27,409	164,868	1,432,904
VERMONT	643,635	5,550	0	52,370	4,460	762,311	1,468,326
VIRGINIA	5,181,070	71,125	0	229,380	249,303	2,167,817	7,898,695
WASHINGTON	3,286,883	451,662	192,695	104,954	35,832	1,315,859	5,387,905
WEST VIRGINIA	2,726,794	12,725	0	127,435	125,303	174,032	3,166,269
WISCONSIN	3,283,226	111,694	109,301	92,966	141,469	466,186	4,204,842
WYOMING	358,421	46,349	137,872	54,360	38,495	60,469	695,974
MICRONESIA	886,840	0	0	0	34,503	217,052	1,138,395
PUERTO RICO	15,466,857	398,566	0	0	1,208,263	285,050	17,358,736
VIRGIN ISLANDS	443,098	0	0	0	25,004	215,021	683,123
GUAM	170,192	0	0	0	6,690	56,874	233,756
TOTAL	$248,482,185	$9,698,422	$6,848,669	$8,183,930	$13,441,806	$84,451,202	$371,106,214

Excludes Donated Services. (2) Includes undistributed Basic Field Reserves.

QUESTION: Will your Native American programs receive the 4.6% increase you plan to give your basic field programs? If not, why not?

ANSWER: Native American programs will receive a 1.8% increase in FY '86. Native Americans have special needs for legal services stemming from their unique legal system, languages and cultures, and their geographic dispersion. Consequently, funding for Native American programs has been more generous than basic field programs. The average funding level for Native American programs is $25.32 per poor person if you use census data. But the average funding level for basic field programs is only $8.43. Therefore, the Board felt that a 1.8% increase for Native American programs would be sufficient. Nonetheless, LSC will undertake a thorough review of the legal access problems of non-English speaking people this year. As part of this we will be studing the feasibility of providing interpreters for various Indian groups including the Navajo.

NATIONAL AND STATE SUPPORT

QUESTION: Why, specifically, was national support reduced by 10 percent?

ANSWER: National support funding was reduced by 10 percent because the Board believes that a shift in program priorities is necessary. Direct service to clients has always been the foundation of Congressional and public support for this program. In a time of scarce resources, it is imperative that we maximize the funds going to direct representation of the poor. Our priority in preparing this budget was to ensure that direct service to clients be increased. Therefore, we have increased funding for basic field programs by 4.5 percent. The increase in basic field funding necessitated cuts in other areas of the budget including national support. However, the Board is studying the possibility of allowing the national support centers to recoup part or all of the 10% cut by selling certain of their services on an experimental basis. Such a plan would grant local programs a greater voice in the allocation of scarce funds among their various support needs. This would not be a drastic change from the present system, which has been frozen into place for years. This is an attempt to develop new ideas for the delivery of legal services.

QUESTION: Why were national and state support treated differently?

ANSWER: State support was treated differently than national support because the Board felt that the services that national support are supposed to provide are more valuable at the state level.

PROGRAM DELIVERY & EXPERIMENTATION--PRIVATE BAR CONTRACTING

QUESTION: The last consolidated operating budget for the Corporation for FY 1984, which I believe was drawn up in December, indicates that $1,819,000 was actually spent for program delivery and experimentation last year. Would you specify how that money was spent?

*(If needed) How much was actually spent on the experimental private bar program?

ANSWER: The distribution of expenses was as follows (see details in the attached tables):

Private Law School Clinics	1,061,000
Private Law Firm Contracts (Commitment $263,700)	80,182
Private Bar Grants	22,000
Technical Assistance	19,368
ACCA (to increase PBI)	70,000
IOLTA (includes $96,569 FL Justice)	166,419
	1,418,969
National Support Center	400,000
Total	1,818,969

	1984 BUDGET	1984 EXPENSES	1984 CARRYOVER	1985 EXPENSES
PRO BONO PROMOTION	70,000	70,000		
ACCA		70,000		
LAW SCHOOL CLINICAL PROGRAM	1,061,000	1,061,000		
1. Vermont Law School		70,000		
2. State University of New York, Buffalo		77,000		
3. University of Virginia		95,000		
4. Indiana University, Indianapolis		90,000		
5. University of Notre Dame		85,000		
6. William Mitchell School of Law		70,000		
7. University of North Dakota		60,000		
8. Loyola University, New Orleans		90,000		
9. University of North Carolina		70,000		
10. Southern Methodist University		70,000		
11. St. Mary's University		90,000		
12. University of the Pacific/ McGeorge School of Law		65,000		
13. University of San Diego		54,000		
14. Gonzaga University		75,000		
PRIVATE BAR GRANTS	200,000	22,000	178,000	
North Carolina Bar Association Expand Pro Bono Project		22,000		
IOLTA GRANTS	275,314	166,419	108,895	98,460
Implementation Grants				
1. New York Bar Foundation		25,000		
2. Kansas Bar Foundation				13,460
3. State Bar of Arizona		25,000		
4. Colorado Lawyer Trust Foundation				5,000
5. Hawaii State Bar Association		19,850		
Clearinghouse				
Florida Justice Institute		96,569		80,000

	1984 BUDGET	1984 EXPENSES	1984 CARRYOVER	1985 EXPENSES
OTHER GRANTS	600,000	400,000	200,000	
Urban Legal Foundation (National Support Center)		400,000		
ALTERNATIVE DISPUTE PROJECT	501,000		501,000	
NORC CONTRACT (Balance Due)	35,000		35,000	
TECHNICAL ASSISTANCE	19,400	19,368	32	
Kansas Legal Services (Attorney Time Study)		19,368		
PRIVATE LAW FIRM CONTRACTS (30% in advance)	1,500,000	80,182	1,419,818	74,443
1984 Contracts - 2 Cities				
1. Acousta & Acousta, Jacksonville FL SS, SSI, Disability	20,000	6,000	14,000	
2. Elder & Smith, Jacksonville, FL Juvenile Dependency	24,000	7,200	16,800	
3. Elder & Smith, Jacksonville, FL Divorce	25,000	7,500	17,500	
4. Washington, Monroe, Davis & Buggs Jacksonville, FL Divorce	46,750	14,025	32,725	
5. J. Nickolas Alexander, Jacksonville, FL Dependency/Adoption	19,200	5,760	13,440	
6. Harold L. Van Voorhis, Des Moines, IO Divorce	50,000	15,000	35,000	
7. Jon Schuster, Des Moines, IO Bankruptcy	22,500	6,750	15,750	
8. Pettit & Mann, Des Moines, IO Wills	6,250	1,875	4,375	
9. Roehrich & Hassel, Des Moines, IO Divorce	50,000	15,000	35,000	
Partial Payments on Completed Cases		1,072	(1,072)	
	263,700			

	1984 BUDGET	1984 EXPENSES	1984 CARRYOVER	1985 EXPENSES
PRIVATE LAW FIRMS (Continued)				
1985 Contracts - 3 Additional Cities				
10. Ramos, Garza & Morales, Laredo, TX Uncontested Divorces	45,000		45,000	13,500
11. Zaffirini, Cuellar & Castillo, Laredo, TX Bankruptcy	13,500		13,500	4,050
12. Stuart M. Parker, Orange County, CA Unlawful Detainer	70,000		70,000	21,000
13. Inge Wagner, Orange County, CA Bankruptcy	15,015		15,015	4,505
14. Printemps & Kaufman, Orange County, CA Unlawful Detainer	64,125		64,125	19,238
15. Baldwin & Brischetto, Portland, OR Child Support	24,000		24,000	7,200
16. Synder & Altman, Multnomah County, OR Bankruptcy	16,500		16,500	4,950
	248,140			
Total Committed for PLF Contracts	511,840			
Total Uncommitted for PLF Contracts	988,160		988,160	
Subtotal	4,261,714	1,818,969	2,442,745	172,903
Transferred to Basic Field category for grants totalling $1.4 million to the lowest funded legal services programs	563,073			
TOTAL	4,824,787			

PRIVATE BAR PROGRAM

QUESTION: The narrative description of the experimental private bar program indicates that the project has been a great success as to price and that it is expected to be a success as to quality.

A. On what basis are the expectations relating to the quality of legal services reached?

ANSWER: LSC's experimental private bar program, known as the Private Law Firm Project (PLFP), studies the cost-effectiveness and workability of competitively-negotiated contracts with private attorneys. Award of these contracts is based on the quality of the cost of service to be provided under those contracts.

The expectations of high-quality legal services through these contracts are derived from the review procedures established for the choice of contractor. While cost of service is easily determined, quality of service is a more difficult and critical determination to make. LSC makes that determination by:

a) requiring proposals from attorneys outlining employee education, experience, and areas of specialization; relevant experience and capability for handling the proposed work; the ability of the firm to cooperate with the local LSC program; the organizational structure and management of the firm; the facilities and location of the firm; and the data collection and reporting capabilities of the firm;

b) conducting an in-house review of those proposals and judging them for the extent evidenced of the ability of the firm to provide appropriate, adequate, and high-quality services; the experience of the firm in providing low-cost, high-volume service in the subject case areas; the utilization of cost-effective, efficient office procedures and techniques; and the extent evidenced of an appreciation of the project objectives and a willingness to work with the local LSC-funded field program;

c) soliciting comments from the local LSC-funded field program on the firms making proposals, on the ability of those firms to serve their clients in a timely, quality manner; and on the ability of those firms to cooperate with the local LSC-funded field program; and

d) soliciting comments from the local bar association on the law firms making proposals; their reputations and standings in the legal community; and their ability to provide quality services under these contracts.

All of the above factors are considered prior to the award of contracts. Given the thoroughness of this process, LSC expects to receive quality services for low-income clients in addition to the primary research data sought.

QUESTION: How many cases have been closed by the private clinics?

ANSWER: This is not a "clinical" project; rather, it is the Private Law Firm Project premised on high volume, competitively bid contracts for the delivery of quality civil legal services to poor individuals.

Attachment 1A identifies project activity for the Private Law Firm Project to date. Five project sites are currently operating with the next four sites to be underway in the next thirty to sixty days.

Attachment 1B displays Private Law Firm Contractors' Monthly Case Activity for the five cities in which a Private Law Firm Project (PLFP) is underway. Case activity is broken down for each contractor for each project site for each month from date of contract commencement. Case activity in this chart is defined by the number of cases LSC is billed per month. However, due to lags in case closure, Attachment 1C identifies case referral rates to contractors in these five project sites, as of April, 1985. The latter may be more representative of case activity to date.

ATTACHMENT 1A

PRIVATE LAW FIRM PROJECT PLANNING ESTIMATES

CITY	a) Date Letters Sent b) Advertised Date(s) c) Date Proposal Due	Case Types/Est. Cost Per Case	+Total Estimated Cost	Total Actual Project Cost	a) Est. Notice of Award b) Actual Notice of Award c) Contract Performance Begins
1. Jacksonville, FL	a) 2/3/84 b) 2/16,17,20,21,22/84 c) 3/31/84	750 divorce/@ $250 200 S.S.I./@ $500 360 Juv. Dep./@$250	$187,500 $100,000 $90,000 $377,500	$71,750.00 $20,000.00 $41,200.00 $134,950.00	a) 5/1/84 b) 4/26/84 c) 6/22/84
2. Des Moines, IA	a) 3/6/84 b) 3/19/84, 4/9/84 c) 4/[illegible]/84	1,000 divorce/@ $150 250 will/@ $50 250 bankruptcy/@ $200	$150,000 $12,500 $50,000 $212,500	$100,000.00 $6,250.00 $22,500.00 $128,750.00	a) 5/7/84 b) 5/22/84 c) 7/15/84
3. Laredo, TX	a) 3/6/84 b) 3/15-19/84; 4/9-13/84 5/29-31/84, 6/1&4/84 c) 4/23/84; 6/22/84	300 divorce/@ $250 100 bankruptcy/@ $375 (Bankruptcy resolicited)	$75,000 $37,500 $112,500	$45,000.00 $13,500.00 $58,500.00	a) 5/11/84 b) 7/11/84 c) 9/28/84
4. Portland, OR	a) 4/10/84 b) 5/15/84 c) 6/12/84	150 bankruptcy/@ $300 240 child support mod./@ $300	$45,000 $72,000 $117,000	$16,500.00 $24,000.00 $40,500.00	a) 6/25/84 b) 7/9/84 c) 10/19/84
5.# Santa Ana/ Garden Grove, CA (Michael)	a) 7/2/84: est. 12/31/84 b) 7/2-5/84: est. 12/31/84 c) 8/1/84: est. 1/31/85	625 unlawful detainer/@ $500 130 bankruptcy/@ $500 150 S.S.I./@ $600 * (*S.S.I. cases still being reviewed)	$312,500 $65,000 $90,000 $467,500	$134,125.00 $15,015.00 N/A $149,140.00	a) 8/17/84 b) 8/27/84 c) 12/17/84 (see resolicit SSI)
6. Lexington, KY (Dean)	a) 1/14/85 b) 1/14/85 c) 2/14/85	500 uncontested divorce with support collection/@ $250 100 uncontested divorce with support defense/@ $100 200 child support mod./@ $100 80 juvenile dependency/@ $310	$125,000 $10,000 $20,000 $25,000 $180,000	$54,500.00 $10,000.00 $18,000.00 $8,000.00 $90,500.00	a) 4/19/85 b) 5/6/85 c) 6/6/85
7.# Belton, TX (Charles)	a) 7/12/84: 2/12/85 b) 7/20,21,22,29,30,31/84 8/10/84: 2/12/85 c) 9/21/84: 3/29/85	250 military divorce/@ $250	$62,500 $62,500		a) est. 5/10/85 b) c) est. 6/10/85 (resolicitation)
8. Ann Arbor, MI (Michael)	a) 2/14/85 b) 2/14/85 c) 3/30/85	200 emergency spouse abuse/ @ $300	$60,000 $60,000		a) est. 5/19/85 b) c) est. 6/19/85
9. New Orleans/ Jefferson Parish, LA (Michael)	a) 3/20/85 b) 3/20/85 c) 4/25/85	550 no fault unc. divorce/ @ $125 500 bankruptcy/@ $125 250 step-parent adoptions/ @ $125 550 child support/@ $150	$68,750 $62,500 $31,250 $82,500 $245,000		a) est. 5/15/85 b) c) est. 6/15/85
10. Columbus, OH (Dan)	a) est. 5/13/85 b) est. 5/13/85 c) est. 6/13/85	300 bankruptcy debt collection defense/@ $135 250 post decree modification/ @ $125 1000 uncontested divorce/ @ $150	$40,500 $31,250 $150,000 $221,750		a) est. 7/13/85 b) c) est. 8/13/85 tentatively approved by Legal Aid and approved by Columbus Bar
11. San Antonio, TX (Charles)	a) est. 5/27/85 b) est. 5/27/85 c) est. 6/27/85	300 divorce/@ $250	$75,000 $75,000		a) est. 7/12/85 b) c) est. 8/12/85 joint test with Voucher Project

* PLF PROJECTS 1-5 ARE FUNDED WITH FY84 APPROPRIATED FUNDS.
** PLF PROJECTS 6-11 WILL BE FUNDED WITH FY85 APPROPRIATED FUNDS.

+ est. by local bar/program   # solicitation begun but not completed

** 05-May-85 **

ATTACHMENT 1B

PRIVATE LAW FIRM CONTRACTOR CASE ACTIVITY

CITY/LAW FIRM	CASE TYPE	CASE LOAD	CASES BILLED	CASES REMAINING	START DATE	CASES BILLED BY MONTH 1	2	3	4	5	6	7	8	9	10	11
JACKSONVILLE																
Acosta & Acosta	SSI	200	23.00	177.00	6/25/84	-	-	-	-	-	-	8.00	3.00	7.00	5.00	
Alexander	Juv. Dep.	120	15.00	105.00	6/25/84	-	3.25	-	-	0.25	2.00	1.00	0.25	1.00	7.25	
Elder & Smith	Juv. Dep.	240	10.00	230.00	6/25/84	-	1.00	-	-	-	0.50	3.00	3.00	2.50		
Elder & Smith	Unc. Div	200	39.50	160.50	6/25/84	-	0.50	-	-	-	13.00	8.00	9.00	9.00		
Washington, Monroe ..	Unc. Div.	550	131.75	418.25	6/25/84	-	-	5.00	12.00	20.50	12.75	16.50	21.50	17.75	25.75	
DES MOINES																
Van Vourhis	Unc. Div.	500	6.75	493.25	7/13/84	-	-	-	-	1.25	1.00	-	4.50			
Roenfrick & Hassel	Unc. Div.	500	4.00	496.00	6/25/84	-	-	-	-	-	-	-	4.00			
Schuster	Pers. Bank.	250	13.75	236.25	7/15/84	-	-	-	-	-	-	6.00	7.75			
Pettit & Mann	Wills	250	57.00	193.00	7/15/84	10.00	7.00	4.00	3.00	6.00	10.00	5.00	6.00	6.00		
LAREDO																
Garza, Morales ..	Unc. Div.	300	11.00	289.00	9/28/84	-	-	-	-	-	11.00					
Zaffirini, Cuellar ..	Pers. Bank.	100	0.00	100.00	9/28/84	-	-	-	-	-						
PORTLAND																
Baldwin & Brischetto	Child Supp. Mod.	240	11.50	228.50	10/18/84		-	-	-	11.50						
Snyder & Altman	Pers. Bank.	150	0.00	150.00	10/18/84	-	-	-	-							
SANTA ANA																
Parker	Unl. Detainer	400	0.00	400.00	10/24/84	-	-	-	-	-						
Printemps & Kaufman	Unl. Detainer	225	16.30	208.70	10/23/84	-	-	2.30	8.00	6.00						
Wagner	Pers. Bank.	130	2.25	127.75	10/17/84	-	-	-	-	1.25	1.00					
	TOTAL:	4,355	341.80	4,013.20												

ATTACHMENT 1C

SUMMARY OF CASE REFERRALS (April, 1985)

City	% of Contract Expired	Case Type	Total # Cases Awarded	Total # Cases Referred	% Cases Referred
Laredo (9/28/84)	50%	Bankruptcy	100	13	13.00%
		Divorce	300	130	43.30%
Des Moines (7/15/84)	66%	Wills	250	58	23.00%
		Divorce	1000	90	9.00%
		Bankruptcy	250	71	28.00%
Portland (10/19/84)	42%	Child Support	240	65	27.00%
		Bankruptcy	150	47	31.40%
([illegible]) Orange County (10/17/84)	42%	Unlawful Detainer	625	36	5.76%
		Bankruptcy	130	2	1.53%
Jacksonville (6/25/84)	75%	Juvenile Dep.	360	105	29.17%
		Divorce	750	458	61.00%
		Soc. Sec./SSI	200	130	65.00%
	TOTAL		4355	1205	27.67%
	TOTAL	Divorces	2050	678	31.10%
	TOTAL	Bankruptcy	630	133	21.10%

QUESTION: In comparing the cost per case of the contracts that have been awarded to date with the cost of the regular programs, has the Corporation taken into account the cost of client screening and other services provided to the private clinic and efficiencies resulting from the narrow range of cases being handled?

ANSWER: As part of the ongoing nature of this project, LSC has been following the cost of client screening and other services provided to the private attorneys. These services appear to be similar to those generally provided to Private Attorney Involvement (PAI) component participating attorneys.

Cost comparisons between PLFP contracts and regular LSC-funded field programs have only been done at crude, highly-aggregated levels that are adequate only for raising questions about performance comparisons and the nature of performance evaluation. As such, crude accounting for these externalities has been done but the overall analysis is of only limited usefulness.

Project staff are aware of external economies in the project design and will seek to account for them in project analysis. Accurate accounting of these external costs must wait until the termination of the contracts; at that time full review of the interrelationship with the local field program will be done.

Accounting for the efficiencies resulting from contracts handling a narrow range of cases is the objective of this project. PLFP testing has sought to expand case types under review to more fully encompass those case areas that could be handled through this model.

QUESTION: What kind of quality control procedures does the Corporation have set up to ensure that adequate services are being provided by the experimental programs?

ANSWER: All of the quality-control mechanisms LSC uses to ensure that adequate services are being provided by its regular field programs will be used to ensure that its experimental programs are providing high-quality services. In addition to these regular control mechanisms, LSC is using the following additional quality control mechanisms:

a) Client Satisfaction Surveys which are anonymous and confidential, with stamped, LSC-addressed return envelopes, are provided to each client served under this contract in order to let the client directly comment on the service he or she received. Note that not just a sample of clients is selected. Staff feels that it is imperative to solicit comments from all participants in this experimental delivery model.

b) Case Service Reports require additional case data beyond that required by existing staff-attorney programs, including time-data on the amount of work given each case, and the amount of time needed to complete each case.

c) Ongoing discussions with the local program as to their perceptions of how contract performance is progressing are maintained on a regular basis. Each participating local staff program is intimately tied to this project, being directly involved in the contract process and in the intake, referral, and grievance functions.

d) The local program's client grievance mechanism, external to the contractor, is available for the resolutlion of grievances against any contracting attorney.

QUESTION: Do you believe this kind of competitive bidding procedure is applicable for the existing staff attorney programs, which handle a wide variety of cases, have an unpredictable caseload, and have to engage functions such as client screening which are more comparable to the activities of the welfare system?

ANSWER: The idea of applying competitive bidding to existing staff attorney programs is an interesting concept. For example, the private market currently supports a type of competitive bidding or negotiation among pre-paid legal services plans. Such plans currently handle an infinite variety of cases, with an unpredictable caseload. Further, client screening functions already occur, as with any insurance plan, to establish client eligibility for services. Given the similarity of the various factors involved, as you point out, possibly a competitive bidding variation should be more closely examined for applicability to existing staff attorney models.

NEW SUPPORT CENTER GRANTS

QUESTION: What steps have you taken to assure that the new support centers comply with the provisions of the LSC Act, the LSC regulations, guidelines and instructions, and the LSC Audit Guide?

ANSWER: In response to specific concerns stemming from ongoing program supervision, we have monitored the Urban Law Foundation and are working with them to adjust their work plan and improve their performance. Pending resolution of issues raised in this process, the Corporation has held up their April 1, 1985 check.

The National Legal Center for the Medically Dependent and Disabled is progressing well in their substantive activities despite the fact that their first check was not released until December 1984. The Corporation has carefully overseen this recipient and is giving assistance to them in complying with all legal and programmatic requirements.

The Constitutional Law Center also did not receive its first check until December 1984. They are now fully staffed and are about to publish the first issue of a newsletter going to all recipients covering constitutional developments affecting the poor. As with the National Legal Center for the Medically Dependent and Disabled, the, Corporation has carefully overseen the recipient and is assisting them in compliance with all legal and programmatic requirements.

QUESTION: Has your staff waived for any of the three grantees any provisions of the LSC Act, regulations, guidelines, instructions or Audit Guide. If so, please specify which ones and why?

ANSWER: No, we have no record of any such waivers.

QUESTION: What is the current status of the operation of the three grantees?

ANSWER:

1) The Urban Legal Foundation has submitted Quarterly Reports for the first and second quarters pursuant to its contract with LSC. The workplan is presently being revised in discussions between LSC and ULF.

2) The Constitutional Law Center is about to publish its first newsletter, the Constitutional Law Reporter, to appear bimonthly. The Center is fully staffed and has acquired all necessary facilities to carry out its workplan. A research system has been specially designed for index and retrieval of

cases and legal points dealing with the constitutional rights of the poor. A toll-free 800 number has been placed in service.

3) The National Legal Center for the Medically Dependent and Disabled recently conducted a training conference on the right to beneficial medical care. Over two hundred persons attended, including representatives from legal aid programs. Nineteen papers were presented at the conference, and will be distributed to all LSC grantees.

The March, 1985 Clearinghouse Review published an introduction to the Center. Services have been provided to nine legal aid field offices, and the Center has consulted on seven cases involving the right to beneficial care.

The Center is about to publish its first edition of Issues in Law & Medicine, and continues to develop its library on legal and medical issues relating to medically dependent and disabled persons.

The Center has responded to requests from a U.S. Congressman and from State Senators and Representatives for technical assistance in its area of expertise.

The Center has initiated contact with other National Support Centers to begin coordination of activities with them.

QUESTION: Will you refund the grantees next year?

ANSWER: The Corporation has made no commitment to funding these three new grantees in 1986 and there are, at present, no funds budgeted for funding them. As they are new grantees and have not yet run even half their term, it would be unreasonable and unfair for the Corporation to reach any conclusion concerning their refunding.

The Corporation is currently engaged in a process of monitoring and evaluating these grantees; on the basis of the data resulting from this process and with due consideraton of budgetary factors, the Corporation will consider any application for further funding which any or all of these grantees may make. (It is to be noted that, under current appropriations language, there is a possibility that the Corporation may be legally compelled to refund these three grantees in FY 1985 and 1986, Mass Law Reform v. LSC.)

QUESTION: Out of what section of the LSC Budget were the grants funded? Why?

Why were they not funded out of the National Support line item?

ANSWER: The grants were given from the Program Maintenance and Improvement Category and Program Development and Experimentation.

One of the three grants was clearly not a support center in the common usage of that term. Rather, the purpose of the grant was to establish a procedure for providing delivery research and experimentation aid and to serve as a clearinghouse to local programs to enable them to effectively and economically carry out their obligation to use a portion of their annualized funds to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients.

In the case of the other two grants, those who made the decision to fund the entities determined that, as experimental projects with an emphasis on training and technical assistance, the grants were suitable expenditures under the Program Maintenance and Support budget category. Hence, it was felt to be appropriate to fund those two grants from that category.

The matter of reprogramming was not a concern because no moneys had to be moved from one category to another. The two grants were made from a category which was functionally descriptive in the minds of those who made the decision to give the two grants.

It should be noted here that the budget document is not totally descriptive. Grants to programs are given from a stated budget category, but the performance requirements of the grant often mandate activities that would reasonably appear to be covered by other categories. The Corporation, in its last budget submission attempted to make the categories more functionally descriptive. It intends to continue to improve the categories in future submissions.

QUESTION: If the grants are refunded next year, would the money be charged off to the same line of the LSC budget as in FY 1985, or would they be charged off to National Support?

ANSWER: The lines referred to no longer appear in LSC's consolidated operating budget.

QUESTION: At the previous hearing, it was stated that there are grantees "who are still holding appropriated funds in interest bearing accounts for the express purpose of continuing activities that Congress has prohibited."

How many programs? Which specific ones?

How much money is involved?

ANSWER: An extensive written answer with an attachment to this question was submitted to this Subcommittee for the record of the April 24, 1985 hearing.

CASE CLOSINGS

QUESTION: The fact that the number of cases closed by the field programs has risen while their funding has been reduced has been frequently cited over the last year. What changes have there been in the way cases are closed? What interpretation would you place on those changes?

ANSWER: Attached is a LSC Fact Sheet listing cases closed by LSC-grantees for fiscal year 1980, 1981, 1982, and 1983. As indicated, the number of cases closed has risen with a reduction in funding over that four-year period.

Review of reasons for closure and cases closed indicate relative increases and decreases that may account for shifting of resources to meet funding decreases. This may mean that programs restructured themselves to minimize services viewed locally as unnecessary and to increase productivity of staff.

CHARACTERISTICS OF CASES CLOSED
FISCAL YEARS 1980, 1981, 1982 and 1983

LEGAL PROBLEMS	1980		1981		1982		1983		1982-83
	Number	%	Number	%	Number	%	Number	%	Change
Family	364,618	30.3	359,822	29.5	313,057	27.4	369,066	28.4	56,009
Housing	212,460	17.6	217,292	17.8	217,207	19.0	236,327	18.2	19,120
Income Maintenance	207,381	17.2	220,125	18.0	219,626	19.2	254,221	19.6	34,595
Consumer/Finance	164,696	13.7	167,306	13.7	160,133	14.0	171,879	13.2	11,746
Individual Rights	35,478	3.0	34,572	2.8	31,263	2.8	31,078	2.4	(185)
Employment	37,393	3.1	35,517	2.9	32,392	2.9	38,191	2.9	5,799
Health	24,003	2.0	24,860	2.0	27,119	2.3	29,755	2.3	2,636
Juvenile	11,158	0.9	13,544	1.1	13,912	1.3	15,690	1.2	1,778
Education	5,563	0.5	6,620	0.6	15,023	1.3	18,724	1.5	3,701
Other	141,103	11.7	141,936	11.6	111,749	9.8	133,397	10.3	21,648
TOTAL ALL CASES CLOSED	1,203,853	100.0	1,221,594	100.0	1,141,481	100.0	1,298,328	100.0	156,847

REASON FOR CLOSURE	1980		1981		1982		1983		1982-83
	Number	%	Number	%	Number	%	Number	%	Change
Court Decision	139,523	11.6	133,045	10.9	103,999	9.1	109,013	8.4	5,014
Administrative Agency Decision	65,995	5.5	71,015	5.8	62,248	5.5	71,240	5.5	8,992
Negotiated Settlement with Litigation	43,988	3.7	49,542	4.1	37,438	3.3	39,003	3.0	1,565
Negotiated Settlement without Litigation	81,994	6.8	81,141	6.6	55,239	4.8	57,657	4.4	2,418
Other	42,849	3.6	44,128	3.6	43,289	3.8	51,216	4.0	7,927
Brief Service	163,599	13.6	175,643	14.4	185,879	16.3	240,397	18.5	54,518
Referred After Legal Assessment	97,939	8.1	93,985	7.7	106,642	9.3	118,367	9.1	11,725
Client Withdrew or Did Not Return	132,879	11.0	139,787	11.4	100,782	8.8	116,502	9.0	15,720
Insufficient Merit to Proceed	36,310	3.0	36,954	3.0	28,919	2.5	35,338	2.7	6,419
Advice	389,218	32.3	386,925	31.7	410,471	36.0	452,861	34.9	42,390
Change In Eligibility Status	9,559	0.8	9,431	0.8	6,575	0.6	6,734	0.5	159
TOTAL ALL REASONS	1,203,853	100.0	1,221,594	100.0	1,141,481	100.0	1,298,328	100.0	156,847

QUESTION: What is the total number of experimental programs LSC intends to fund?

What would their total annualized funding level be?

ANSWER: LSC is funding the following delivery service experimentation projects identifying alternative means to augment and enhance effective and efficient delivery of civil legal services to poor individuals:

1. Private Law Firm Project (PLFP)

   Under this model contracts are awarded to private law firms based on high-volume, competitively bid proposals for quality service delivery. Five (5) project sites were implemented in FY 84, the first year of the project with eight (8) sites under development in FY 85.

2. Vouchers

   This is a joint project with the American Bar Association to test the workability, effectiveness, and efficiency of this client choice oriented delivery mechanism. The first site, in San Antonio, will be a comparison demonstration with a PLFP and a local LSC staff-attorney program. It is anticipated that 2 other demonstration sites will be developed and funded in FY 86.

3. Law School Civil Clinical Education Grants

   This FY 1984 projected funded eighteen (18) month project grants to expend/develop clinical projects serving the poor. These grants, like the projects above are both research and direct delivery of service to the poor. Fourteen (14) grants were made in FY 84. No additional grants are being made in FY 85 under this project.

4. Elderlaw Projects

   As a result of a Congressional mandate, $2 million is being awarded by July 1, 1985, for law school clinics, pro bono projects, and materials development related to serving the elderly. This project will end on July 1, 1987.

5. Interest On Lawyer Trust Accounts (IOLTA)

   The Corporation is concluding its IOLTA projects with FY 85 funding. The final eight (8) implementation and development grants were announced in April, 1985, and along with another grant to the National IOLTA Clearinghouse, these funds are used to leverage establishment of IOLTA fund accounts to provide additional civil legal assistance to the poor.

6. American Corporation Counsel Institute (ACCI)

A one-time $70,000 grant was made in FY 85 to ACCI to further expand involvement of corporate counsel in pro bono work. (A previous grant was originally made to ACCI's parent organization).

7. Bar Grants

These are one-time grants to model bar projects. To date one site has been announced in FY 85. Two additional such grants are being developed and negotiated for implementation to begin during FY 85.

All such experimental research programs are oriented to providing direct delivery of legal services and/or leveraging of future resources in this regard. All such grants and contracts are one-time and are not funded on a regular, ongoing, annualized level. Apart from the special $2 million Elderlaw fund from Congress, these remaining projects and a planned $500,000 legal needs study will absorb a budget of approximately $3 million in FY 85. Much of this work is ongoing from FY 84, and likewise, contracts made in FY 85, will result in carryover of those committed funds into FY 86.

QUESTION: The Corporation's FY 1985 Budget submission indicated that there was a $3 million carryover from FY 1983 to FY 1984 in program delivery and experimentation. I understand that $560,000 was transferred out of that account during the course of FY 1984, that spending was charged to program delivery and experimentation which really was not (as we just discussed), and yet there is still a $2,442,000 carryover from FY 1984 to FY 1985. Why?

ANSWER: The $3 million appropriation was a one-time allocation for program delivery and experimentation. Rather than "push" all those funds through the Corporation in FY 1984, careful planning, development, implementation, and evaluation designs were considered by the Corporation. The $3 million in funds was applied to projects initiated in FY 1983-1984 and which continue today in various stages of development. In late FY 1984, $400,000 was applied to a grant to the Urban Legal Foundation (ULF) by then President Bogard. Currently, LSC is working with ULF to ensure that their activities are in concert with planned delivery research projects sponsored by LSC.

Although program experimentation research has been designed as "research," a double benefit has been derived as all projects also are designed to provide direct service delivery (just as if funds were provided directly to field program recipients).

The Corporation itself has experienced a learning curve in fine tuning these projects, and is now executing implementation with a greater facility. The initial carryover figures for

Program Development are declining and will decline markedly in future years for two reasons: 1) enhanced ability to implement the new model experiments based on experience gained to date, and 2) reduction in carryover requests by Program Development (recently staff recommended a cut exceeding 25 percent of the $2,442,000 carryover referenced in the question above -- monies to be re-allocated for basic field programs).

Finally, funds were not expended as rapidly as initially predicted based on the immense success, to date, of the costs associated with the Private Law Firm Project. High volume, competitively bid proposals by private attorneys and law firms (working in conjunction with local basic field programs) have demonstrated to date that market forces, along with other factors, were most effective in driving costs for the project down, therefore resulting in carryover costs which were larger than anticipated.

QUESTION: Has any of the FY 1985 money for program delivery and experimentation yet been spent?

ANSWER: Attached is a copy of the most recent project budget for Program Development in FY 1985. Since this budget was prepared for the LSC Board in April, 1985, it is anticipated that the LSC Board will reduce carryover funds by an additional $650,000 from the figures displayed in the attachment. To date in FY 1985, Program Development has awarded or announced contract/grant awards for a total of $714,500. An additional $431,658 is committed carryover to pay for contracts for existing projects initiated during FY 1984. And finally, another $500,000 has been set aside for a legal needs study. This is from an antcipated total budget of approximately $3,000,000 (including FY 1984 carryover).

PBSS
Proposed 1985 Grant and Contract Summary as of 4/1/85

	1984			1984 Balance		Proposed Budget FY85 (3/28/85)		
PBSS PROJECTS (PRIORITY LISTING)	Revised Budget	Expense	Balance	Committed	Uncommitted	Appropriation	Carryover	Budget (App.&Carryover)
DELIVERY RESEARCH:	-	-	-	-	-	-	-	-
a. Existing PLF Contract Commitments (entered in FY85)	1,500,000	80,182	1,419,818	431,650	988,160	-	431,650	431,650
b. PLF Phase I:	-	-	-	-	-	279,050	665,200	944,250 (1/)
c. PLF Phase II:	-	-	-	-	-	-	600,000	600,000
d. Vouchers (incl. San Antonio)	-	-	-	-	-	500,000	-	500,000
PRIVATE BAR INVOLVEMENT: (2/)	200,000	22,000	178,000	-	178,000	-	-	-
e. Bar Grants	-	-	-	-	-	290,950	-	290,950
f. ACCI	-	-	-	-	-	70,000	-	70,000
OTHER GRANTS AND CONTRACTS: (3/)	600,000	400,000	200,000	-	200,000	-	-	-
g. IOLTA Clearinghouse	-	-	-	-	-	80,000	-	80,000
h. IOLTA Proposals	275,314	166,419	108,895	22,603	86,292	209,000	-	209,000
SPECIAL STUDIES:								
i. Legal Needs Study	-	-	-	-	-	400,000	100,000	500,000
j. National Support Study	35,000	-	35,000	31,876	3,124	-	35,000	35,000
k. Alternative Dispute Resolution (4/)	501,000	-	501,000	-	501,000	-	-	-
MISCELLANEOUS:								
l. Technical Assistance	19,400	19,368	32	-	32	-	-	-
m. Recoveries/Receivables	-	-	17,255	-	17,255	-	-	-
TOTALS: (5/)	-	-	-	$486,137	$1,973,443	$1,829,000	$1,831,850	$3,660,850

1/ An estimated 25% of this appropriation will be expensed in FY85 and the remaining 75% will be expensed in FY86 in accordance with PLF contracts.

2/ (e) and (f) to be funded from original "PBI" line from 1985 appropriation of $525,000 and original budget (appropriation and carryover) of $703,500.

3/ (g) and (h) to be funded from original "Other Grants and Contracts" line from 1985 appropriation of $603,500 and original budget (appropriation and carryover) of $603,500

2/ and 3/ Note: Balance remaining from FY85 appropriation for "PBI" and "Other Grants & Contracts" placed in FY85 appropriation for "b. PLF Phase I".

4/ Alternative Dispute Resolution to be expensed in FY86; not included in FY85 budget.

5/ Totals for 1984 Budget history (first three columns) are shown on the original "1985 Grant and Contract Summary as of 1/85". See notes on that chart for deletions and explanation

QUESTION: Corporation staff has indicated that a portion of the FY 1984 carryover is needed to meet existing commitments and that an additional amount is necessary to allow "continuation of demonstration projects in the alternative delivery area".

Exactly what are the nature of these commitments?

ANSWER: $431,658 is committed carryover of FY 1984 funds for Private Law Firm Project contracts. To assure prudent fiscal responsibility and control, LSC has constructed contracts which award 30 percent of value at time of award, and provides for future progress payments as cases are completed and billed. Certain other commitments are for projects and programs that were approved but not initiated in FY 1984.

Budgets for specific Program Development projects are not established coincident with the fiscal year, as are basic field recipients. Rather, research activities, being new or unique, require development time and thus various programs and project sites are launched throughout the fiscal year. This situation becomes more obvious, for as an additional measure of control with new projects, Corporation funds are distributed on the basis of progress accomplished, thereby resulting in committed carryover as projects extend across fiscal calendars.

QUESTION: It appears that the Corporation is attempting to shift FY 1985 costs to FY 1984 dollars to avoid the statutory spending ceiling Congress imposed in FY 1985. That is especially ironic since Mr. Opsut, in his statement, is criticizing LSC grantees for doing exactly the same thing. Do you have an explanation for this?

Why not use funds appropriated in FY 1985 for program delivery and experimentation to maintain those activities and take the carryover funds and earmark them to the established direct service programs?

ANSWER: The Corporation does not believe that Congress imposed a "statutory spending ceiling" on any category. Congress did, however, limit the amount of funds in the 1985 appropriation that could be allocated to particular lines in the Corporation's budget. The Corporation is making progress payments on contracts, in the case of Program Development, from funds that were set aside and committed by contracts in 1984.

Contracts begun in 1984 will be completed with 1984 funds. The funds that Congress authorized for 1985 are being programmed into other areas of Program Development or for contracts initiated in FY 1985. The programs funded in this category do, in fact, provide direct delivery of legal services. Because of the innovative nature of the programs, however, they are able to provide delivery service outside of the standard staff attorney model. Upon completion of planned project sites comprehensive evaluation of a given model, based on data collected throughout the project's duration, will be provided. At such time, the value and utility of such models as applied by either the Corporation or individual basic field recipients will be discussed. Each project site, is a one-time demonstration effort; final evaluation cannot commence until demonstration efforts are concluded and results are tabulated and analyzed.

LAW SCHOOL CLINIC PROGRAM

QUESTION: In issuing the law school clinic grants last year, what criteria other than cost per case were used?

ANSWER: Criteria for the selection of law school grants were publicized with the issuance of the original Request for Proposals. The nine selection criteria used by the members of the advisory committee in making recommendations were included both in the Federal Register notice and in the solicitation packages themselves. A copy of these criteria, as explained in the solicitation, is included as Attachment 1. These same criteria were used by the Director of OPD, or his representative, in making his recommendations.

Each member of the advisory committee independently scored all the proposals and then met to develop a consensus recommendation. The consensus recommendation as developed by the committee as a whole was the official ranking of all applicants. The Director of OPD, the office responsible for the project, also made recommendations, based on his independent review of all proposals submitted.

Both of these recommendations were given to President Bogard who had the final decision making authority. When deciding which of the recommended schools to select, he asked for additional data concerning schools which had been recommended, which included:

1) the number of estimated cases to be handled; and

2) the amount of Department of Education funding (which had been included as an original consideration).

Staff does not know the extent to which this additional data on the recommended schools influenced his final selection process.

QUESTION: Will you provide us with the rankings of the various applicants for grants as recommended by those who reviewed the applications, the cost per case estimated in each application?

ANSWER: Attached are copies of all recommendation memoranda from both the advisory committee and the Director of OPD, or his representative, which were sent to President Bogard. These include:

Attachment2: Committee recommendation regarding National Clinic

Attachment 3: OPD recommendation regarding National Clinic

Attachment 4: General committee recommendation

Attachment 5: General discussion in committee consensus meeting

Attachment 6: OPD general recommendation

Attachment 7: Explanation of OPD Region 4 recommendation

Attachment 8: OPD Region 4 recommendation

Attachment 9: Requested case analysis of recommended schools

Attachment 10: Requested OPD revised recommendations

Attachment 11: Requested DOE funding levels

ATTACHMENT 1

SELECTION CRITERIA

All proposals submitted to LSC/OPD will be reviewed to insure that each is responsive to the minimum requirements set forth in this solicitation. Proposals will then be reviewed and rated by an LSC panel so that rankings can be established for determination of grant awards. The following criteria will be used to assess each proposal:

1. The proposal provides a clear description of project activities and an effective plan for management of the project.

2. Evidence that the project director and key project staff have the necessary qualifications and experience to effectively administer the proposed project and will be able to allocate an adequate amount of time and resources to the project, especially to appropriate levels of student supervision.

3. The extent to which a cooperative effort is shown between an area's legal services provider and the corresponding area law school clinics. Letters or other evidence of support by this organization for the proposed project may be attached where appropriate.

4. Evidence that the proposed expansion of the law school clinical experience provides for the high quality education and training of students in the necessary areas of the law.

5. The extent to which the proposed project will increase the participation of attorneys in the supervision of students under the clinical legal education program.

6. The proposal provides a clear description of past and planned evaluation activities in order to gauge the applicant's commitment to effective and efficient operation of its clinical program.

7. The degree to which the institution's regular budget is currently allocated to its clinical education program, and to its civil clinical project activities, and assurances or evidence that such budgetary support will be maintained during

and beyond the term of the grant. The viability of the civil clinical project beyond the term of the grant must be specifically addressed.

8. The proposal provides a budget which is adequate to support project activities, and cited costs are reasonable in relation to the scope and objectives of the proposed project. Indirect administrative costs must be specified in the proposal. Lower indirect costs will be given a higher rating; in order to maximize service delivery, an absence of indirect costs would be preferred.

9. The proposal demonstrates that the applicant plans to make an adequate in-kind contribution which, among other things, could include contribution of adequate facilities and equipment to the proposed project.

These criteria should be given thoughtful consideration by each applicant in the narrative portion of the proposal. Fair credit for each criterion cannot be given by the review panel unless appropriate evidence or discussion is provided in the proposal.

Those applicants with proposals which are among the highest ranked may be subject to an on-site review by LSC/OPD staff to determine final grantee selections.

ATTACHMENT 2

MEMORANDUM

TO: Peter Broccoletti
Office of Program Development

FROM: Law School Civil Clinical Program Evaluation Committee:
William Pincus, Richard Taylor, Keith Osterhage, Charles Moses CM
K.O.

RE: Funding of the National Model Legal Clinic

DATE: May 7, 1984

On April 24, 1984, this committtee met to begin considering the law school grant proposals. The first proposals given full consideration were those which implemented a national extern model. Only one law school, George Washington University, submitted a proposal in that category.

After the initial evaluation, the Committee was favorably impressed with the GWU proposal. However, several committee members were concerned about the high rate of overhead which the University was charging. The Committee was also concerned about requiring additional ongoing supervision by the University, in addition to that of local legal services attorneys, to ensure the quality of the intern's work. Because the Committee wanted to fund this experimental and innovative national clinic to investigate the benefit of law school clinics to rural programs and those programs not located in an area adjacent to a law school (as was noted in the original solicitation), it unanimously requested that several committee members contact individuals at GWU to clarify these budget and supervisory items.

Consequently, Charles Moses and Keith Osterhage initiated negotiations pursuant to this Committee recommendation. The negotiations resulted in revisions which have been incorporated into the original George Washington University proposal. When the Committee met to consider the other proposals on May 7, 1984, it approved these revisions as effectively complementing the proposal to eliminate the minor problems.

Consequently, the Law School Civil Clinical Program Evaluation Committee unanimously recommends that the Legal Services Corporation should fund the national externship clinic proposed by George Washington University. A copy of the George Washington University proposal is attached for your review.

Please note that the proposal calls for initiation of the clinic during the summer of 1984. Consequently, the Committee hopes that you can expedite this recommendation in order to allow funding as soon as possible so that no changes will be required in this timetable for implementation.

Attachment

ATTACHMENT 3

MEMORANDUM

TO: Donald P. Bogard
Executive Office

FROM: Peter P. Broccoletti, Director
Charles T. Moses III, Project Director
Law School Civil Clinical Program
Office of Program Development

RE: Funding of the George Washington University National Externship Clinc

DATE: May 8, 1984

Attached for your review is the first of the Law School Civil Clinical Program Evaluation Committee reports. After a thorough review of both the Committee recommendation, and the George Washington University proposal, we recommend that you adopt the Committee recommendation that the Corporation fund the GWU national externship proposal. Also attached for your review is a copy of the GWU proposal.

The timing of this recommendation, prior to the recommendations for the other projects, is necessitated in order to allow implementation of the clinic this summer. As you know, after publication of a grant we must allow a thirty (30) day notification and comment period prior to actual dispersal of funds. Therefore, if the proposed summer schedule will be followed, we must publish the official notice announcing the grants as soon as possible.

Attachments

ATTACHMENT 4

MEMORANDUM

TO: Donald P. Bogard, President
Peter Broccoletti, Director
Office of Program Development
Tim Baker, Office of Field Services

FROM: Law School Civil Clinical Program Evaluation Committee: William Pincus, Richard Taylor, Keith Osterhage; KO Charles Moses CTM

RE: Recommendations for funding Law School Clinics

DATE: May 11, 1984

On May 7, 1984, this Committee met to consider selection of the remaining recommended grantees for the Law School Civil Clinical Program. Each Committee member had read and scored every proposal prior to this meeting; Michael Losavio had scored Region 2 in place of Dick Taylor who had recused himself from that region. The scoring was based on the selection criteria which had been approved previously for inclusion in the solicitation. A scoring sheet listing these criteria is attached. Of course, this Committee had officially recommended funding of the National Model; therefore, it limited its review to selection of eleven grantees at the outset of the meeting.

Each member was favorably impressed with the over-all quality of the proposals. However, the Committee was less impressed with both the quality and the quantity of proposals from Region 3 and Region 5. Therefore, the Committee recommends that the additional at-large awards should be made in Regions 1, 2, 4, and 7. The at-large awards (4) are in addition to the award of one grant in each of the seven regions plus a national externship model grant, for a total of 12 grant awards. Region 6 also had excellant proposals, but the Committee felt that those four regions listed above should be rewarded with the at-large grants due to the highly competative nature of these regions.

The Committee first accumulated the various scores and rankings from the seven regions. A summary of these results is attached. Based on these results, various law schools in each region automatically rose above the others for consideration. Consequently, the Committee concentrated its discussion on those proposals which all members agreed were superior.

Accordingly, we make the following recommendations by region, consistent with the philosophy that regions 1, 2, 4 and 7 should be awarded at-large grants. Depending upon the quantity and quality of proposals received from each region, one or two alternates were also selected for funding with the availability of additional funds after recoupment from initial grant awards based on the DOE funding awards to the same schools. Additionally, the Committee has recommended partial funding of schools in regions 5 and 6 in order to recognize comparable proposals where at-large awards were not recommended. This strategy, endorsed by the Committee, leverages our resources with more schools than originally planned and supports more quality programs which can be given additional impetus with LSC support.

A more detailed report detailing the discussion within each region will be forthcoming.

SCHOOLS ARE LISTED IN ORDER OF PREFERENCE BY THE
REVIEW COMMITTEE'S FINAL CONSENSUS

Committee Recommendations:

Region 1	
Recommended for funding:	1. Vermont Law School
	2. SUNY-Buffalo
Alternate:	1. Harvard University
	2. Franklin Pierce Law Center
Region 2	
Recommended for funding:	1. University of North Carolina
	2. University of Virginia
Alternate:	1. Delaware Law School
Region 3	
Recommended for funding:	1. Nova University
Alternate:	1. Loyola University/New Orleans
REGION 4	
Recommended for funding:	1. University of Chicago
	2. Indiana University/Indianapolis
Alternate:	1. Southern Illinois University
	2. Notre Dame University
REGION 5	
Recommended for funding:	1. Southern Methodist University ($50,000)
	2. Thurgood Marshall School of Law ($50,000)
Alternate:	1. Saint Mary's College
REGION 6	
Recommended for funding:	1. Gonzaga University ($50,000)
	2. University of North Dakota ($50,000)
REGION 7	
Recommended for funding:	1. Stanford University
	2. Loyola Marymont/Los Angeles
Alternate:	1. University of the Pacific, McGeorge School of Law

ATTACHMENT 5

MEMORANDUM

TO: Donald P. Bogard, Executive Office
Peter Broccoletti, Office of Program Development

FROM: Law School Civil Clinical Program Proposal Evaluation Committee: William Pincus, Richard Taylor, Keith Osterhage, KO Charles Moses CTM

RE: Discussion Concerning Recommended Law Schools

DATE: May 18, 1984

On May 11th, the Evaluation Committee submitted its initial recommendation concerning selection of law school clinic proposals. This follow-up memo is designed to clarify the specific reasons for recommendations within each region.

The content of these discussions was already given to Peter orally prior to his recommendations to the President. Either Charles Moses or Keith Osterhage, members of the Committee, are available if you have any questions concerning the Committee discussion.

REGION 1

After the initial scoring by individual Committee members, a pattern developed which identified four schools in contention for the grant award from Region 1. All Committee members initially agreed that Vermont Law School should be funded. This was based on the demonstration of need for services in the suggested rural area for inclusion in the project. Additionally, Vermont demonstrated a strong University financial commitment as well as a good projected caseload over the term of the grant.

Harvard Law School submitted a good proposal for expansion of their existing clinic. However, the Committee felt that the University was wealthy enough to finance such expansion by itself. Further, the Harvard clinic was already receiving a large GBLS subgrant. Franklin Pierce Law Center proposed an interesting idea to utilize law students in conjunction with pro bono lawyers as well as legal services providers. Both Keith Osterhage and Charles Moses liked this idea; however, Mr. Pincus was concerned that such a plan would be too unsupervised for effective use and would be used primarily as a placement device by the school. Dick Taylor was concerned that the proposal was too separated from the local program. SUNY-Buffalo proposed a clinic which would specialize in much [illegible] of practice - bankruptcy, landlord tenant and family law. Given the current depressed area around Buffalo the demonstrated commitment which SUNY Buffalo was willing to make and the viability of the project past 1985, the Committee decided to recommend it for funding. This was due in large part to the potential problems in the other two proposals of comparable quality in that Region, Harvard and Franklin Pierce.

REGION 2

Compilation of all scores and ranks in Region 2 identified three schools which ranked several hundred points ahead of the rest of the pack - the University of North Carolina, the University of Virginia, and Delaware Law School.

The Committee chose to recommend funding for both the University of North Carolina and the University of Virginia. North Carolina proposed a general in-house clinic with a good likelihood of future funding. During the past year, its clinic had demonstrated large case service capability. But this next year, UNC will be losing a major source of non-university funding. Our grant would enable the clinic to continue until other funding sources become available. The Committee was favorably impressed with the letter of recommendation concerning the clinic's effect on pro bono work, which was written prior to our solicitation. Further, UNC would represent a major national reputation law school participating in the project.

Similarly, UVA would give national prestige to the project. UVA proposed a joint project with the local program, concentrating basically in overflow family law matters. Further, UVA does not currently have a major client oriented clinical program. Therefore, this would initiate initial development of a program at a major law school, fulfilling the development aim of the solicitation.

Delaware Law School's proposal was good, however, the Committee did not feel that it was as good as the other two. Although the projected case coverage was impressive, and the proposal called for a good funding mix, Mr. Pincus was especially skeptical of the budget because it listed monetary support which had not necessarily begun or been committed at this point. Consequently, the Committee ranked this proposal third among the region.

REGION 3

The Committee was displeased with the low number of applicants from Region 3. However, as the scores will attest, two schools were obvious standouts - Nova University and Loyola University/New Orleans. In direct comparison, three of the four committee members ranked Nova as the outstanding of the two proposals. Therefore, the Committee recommended to fund Nova. This clinic, concentrating in family law with an emphasis on child abuse cases demonstrated good levels of commitment by the University. Loyola had good case statistic projections for its in-house clinic, and a good recommendation from Michael Losavio's recent visit; however, because of the Committee decision to allocate at-large funding positions to highly competitive areas, the Committee only recommend Loyola as an alternate proposal.

REGION 4

Region 4 was one of the most competitive regions and resulted in the most spirited Committee discussion. However, each of the schools recommended also presented potential problems.

a) The University of Chicago proposed a clinic which would concentrate in social security terminations. The clinic has a national reputation and often trains students who themselves become clinical teachers at other Universities. The subject area of the clinic would coordinate well with the local program, and would be a good area for future pro bono work. Potential problems include a high indirect cost rate which the Committee recommended should be negotiated down before any grant is awarded. Also, Gary Palm from the University of Chicago signed the critical letter sent to law schools deans. However, Mr. Pincus, who knows Gary Palm, thought that we could easily work with him. At the Committee's recommendation, OPD is currently negotiating the indirect cost rate. As of May 15th, Gary Palm has orally told us that if waiver of indirect cost was made a condition of the grant, the University would totally waive the assessment of such costs against the LSC money. Written confirmation of this discussion will be forthcoming.

b) Indiana/Indianapolis was highly rated by all evaluators. It proposed a joint general civil practice clinic. The local program was contributing significant support for the program. Consequently, our funds would be encouraging local programs to become involved in law school clinics according to the 1978 GAO recommendation. There was a Committee consensus to fund this proposal, if we could negotiate down the 23% indirect cost rate. OPD has contacted Indiana, and they are willing to charge a 10% indirect cost rate, with certain budget adjustments which will be forthcoming.

c) Southern Illinois University proposed an intriguing idea for a rural outreach program. The 8% indirect charge to LSC money made the proposal competitive within the region. However, there was unanimous agreement that Chicago and Illinois were superior.

d) Notre Dame University offered an intriguing idea which promised to demonstrate an increase in efficiency of 200% within the local offices in addition to a spousal abuse project. Dick Taylor was skeptical about that large an increase in efficiency. Additionally, the potential student/faculty ratio might be too low for optional service delivery. Finally, the indirect cost rate at 47% was entirely too high, and would have to be renegotiated. Subsequent to this meeting, officials at Notre Dame decided during negotiations with OPD to reduce that rate to 5%.

e) The University of Michigan was also highly ranked within this region. Further, it would provide another national caliber law school, providing acceptance and prestige to the program. However, from the description in the proposal, it appeared that Michigan had reduced its clinical efforts in the past years, moving from an office in downtown to a much less accessible office in the Law Quad on the campus. The Committee felt that this reversal of the University commitment should not be rewarded with an initial grant.

REGION 5

The Committee was relatively unimpressed with the applicants from Region 5. The University of Texas/Austin demonstrated a good commitment to the clinic, however, it was viewed similarly with Harvard. As a wealthy state University, it could afford to expand its clinic independently of LSC assistance. Southern Methodist University submitted the best proposal from that region according to the Committee's consensus. This clinic would concentrate on problems to serve elderly clients, and would work with the local pro bono panel. Further, it would test a heretofore untested model which was listed in the solicitation - the independent clinic. However, due to the size of the University's endowment, the Committee recommended funding only a $50,000 grant to the University.

Both Saint Mary's College and Thurgood Marshall School of Law received comparable rankings within the Committee for a partial grant. In the final analysis the Committee recommended such partial funding for Thurgood Marshall. While both law schools assessed no indirect costs against the LSC money, Thurgood Marshall used 100% of the LSC money to fund personnel which would in turn expand service capabilities. Saint Mary's only used 84% of grant funds for personnel. Additionally, Thurgood Marshall is a minority law school. In fairness, It should be noted that Saint Mary's is also providing services in a primarily Hispanic minority area.

REGION 6

The Committee was favorably impressed with the quality of the applicants in Region 6. After the initial scoring and ranking, five schools rose above the others in contention for the grant: William Mitchell, Willamette, the University of North Dakota, Drake University and Gonzaga University. Initially, as the statistics show, Drake University was eliminated due to its overall low score vis-a-vis the other contenders. Further, the low score combined with a low rank indicates that Dick Taylor was the sole committee member who ranked that proposal in his top three choices.

Willamette was highly ranked by all four members of the Committee. However, in a budget review during that meeting, the Committee decided that Willamette currently had a large amount of funding for its Alternative Dispute Resolution Center over the term of this grant. Therefore, the Committee decided that its funds be used for other clinics. Further, Dick Taylor was concerned that the civil clinic component could have potential conflict of interest problems with the alternative dispute resolution component. The William Mitchell College of Law proposal was discussed. That proposal, among other things, called for full-time, 3/4 time, 1/2 time, and 1/4 time supervisors. The Committee was intrigued by the proposal, but it was concerned that monitoring of such an arrangement would be difficult to ensure that LSC actually got the full amount of services originally intended. However the case projections of 1000 cases over eighteen months seemed impressive enough to qualify William Mitchell as the Committee's alternate selection.

During this discussion, a Committee consensus developed to award two equal awards in Region 6. The first would be to Gonzaga University. Gonzaga has demonstrated a significant commitment to clinical work over the years, which is reflected by its large commitment to this project. The proposal, specializing in the underserved areas of family law, the elderly and institutionalized, commits 99.5% of all LSC funds to personnel. Further, the proposal received good letters of support from other local providers.

The University of North Dakota proposal, which only requested $81,000, was also recommended for partial funding after a Committee discussion. That proposal for services to developmentally disabled individuals was necessitated by a specific recent change in law. Consequently, the proposal would show the Corporation is attempting to meet the changing needs of an underserved client population. The law school currently has a good relationship with the local program, and that relationship would be enhanced by this project, thus furthering the 1978 GAO report objectives. Finally, the North Dakota proposal has a good possibility for future funding with the Easter Seals Society which would help to expand the pool of available resources for provision of legal services.

REGION 7

Region 7, as the scoring statistics reflect, also had two outstanding proposals, Stanford University and Loyola Marymont (L.A.) as well as three closely ranked proposal; the University of the Pacific, McGeorge School of Law, the University of San Diego, and Golden Gate University. Further analysis of the initial scoring indicated that in the case of both Golden Gate and San Diego, only one committee member ranked them highly.

Consequently, discussion was centered around Stanford, Loyola and McGeorge, the schools which were highly rated by more than one committee member. Further, the nature of the San Diego Clinic, immigration law, could have been difficult to monitor to insure compliance with the Corporation's illegal alien regulation.

Each of the three proposals had obvious merits. Given the location of the schools, the desire for geographic dispersion, and the nature of the Loyola clinic, the Committee decided to recommend funding one clinic in Northern California and one clinic in Southern California. A consensus developed to fund the unemployment compensation clinic at Loyola in Los Angeles. It is a joint clinic with good support from both the local program and the University; in addition to the University's financial commitment, it has agreed to waive all indirect costs associated with the LSC grant. Also, Loyola will arrange for an additional evaluation study which could be helpful for our research purposes.

Then the choice narrowed to a decision between Stanford University and McGeorge School of Law. Each of these proposals were closely ranked by our evaluators. A general consensus developed that Stanford should be funded for several reasons. First, the Stanford proposal was initiated to a large extent by students who pushed the University to become involved in client oriented clinical education. Therefore, the clinic would build upon a base of students who were already inclined toward pro bono service activity. The clinic would supplement the existing service provider by re-opening an office in an area where the local office was recently closed. Because of fund raising by the students, the clinic offered a good potential for future viability. Finally, this live client clinic would be the first move of Stanford University into this type of service education. It would add credibility to the LSC grants to use them for initial development of a live clinic at a major national law school. The one potential problem is that the budget needs negotiation, especially concerning the 13% indirect cost rate which the University plans to assess.

However, the Committee recommends McGeorge as a strong alternate in Region 7. The McGeorge proposal calls for an innovative use of alumni based pro bono efforts, a pro bono survey among students as part of the project evaluation which would fit well with our research efforts, and a combination of phone service and client service to cover effectively a rural area. Further, McGeorge did not assess an indirect cost. The one major problem was the lack of support from the local community evidenced by the failure to include letters of recommendation.

ATTACHMENT 6

MEMORANDUM

TO: Donald P. Bogard
Executive Office

FROM: Peter P. Broccoletti
Office of Program Development

RE: Law School Recommendation

DATE: May 11, 1984

I have thoroughly reviewed the law school reader's ratings, comments and pertinent proposals on the hereinreferred to law school proposals. As you will note from my comments, I agree with most of the committee's recommendations but advise some changes.

I recommend we award up to a maximum of 17 grants rather than just 12 because a number of them will be less than $100,000, and our budget has appropriated $1.2 million for the project. I am taking into consideration the amount of DOE grant money that certain schools may likely receive. If said schools do not receive such DOE funds this summer, I suggest we allow them to apply for supplemental funding after September 30, 1984. In the unlikely event that this would occur, we would only need to appropriate approximately $300,000 for grants in our FY 85 budget for the continuation of said law school project. Of course, we should set aside a minimum of $50,000 in our FY 85 budget for evaluation and monitoring costs of said project.

I. NATIONAL MODEL

George Washington University $100,000. I have already given you my recommendation in favor of expeditiously awarding this grant. As you will note from the committee's notes, they have unanimously agreed that we should award the grant. It is important that we make this grant first because of the need to set up the summer program now and for the public relations benefits.

II. REGIONAL MODEL

REGION 1

Vermont Law School $75,000. I agree with the committee that this is one of the best proposals we have received. DOE money may be forthcoming if I reduced the grant to $75,000. The university has a super committment and the proposal

I didn't recommend a grant to SUNY because I didn't think it stood out nor included anything particularly interesting in it, and it relied too heavily on the local program. We have other proposals with a similar model that are superior.

I was not in favor of Harvard because for such an incredibly wealthy school, they didn't put a good percentage of funds into their clinics. Also, they are receiving over $200,000 in LSC funds from Greater Boston.

REGION 2

I agree with the committee and suggest a grant of $75,000 be awarded to the University of North Carolina and $100,000 be awarded to the University of Virginia. North Carolina may get a grant of $25,000 from DOE. University of North Carolina submitted one of the best proposals. It is an excellent program which services the Chapel Hill area in conjunction with Legal Services of North Carolina. They used to get funds from LSNC but will not receive any more funds from LSNC. They are desperate for funds and need the grant to continue servicing the poor people of the Chapel Hill area.

The University of Virginia with our part will start their first live civil clinical program. They have changed their proposal to reflect that all personnel will be hired by the university and will be of the employees university. They are a first class law school whose time to have a civil legal clinic is long overdue. This proposal is well thought out and will handle an overflow of family law matters. The only negative point is that the cases will not be started until November or December, because they want their students to have lawyering courses before taking cases. This grant will be a definite for LSC.

REGION 3

Nova Law School $80,000. Nova may receive about $20,000 from DOE. They had one of the two best proposals submitted. The committee also recommended giving them a grant. They will emphasize domestic violence and have difficult cases closely supervised and assisted by a psychologist and forensics specialists. They have outstanding facilities (an in-house clinic) and support from the law school. They are very well thought of by the community.

Loyola of New Orelans $100,000. The committee rated this proposal high but felt that the region was too weak and that we should not make two grants. I strongly disagree. This region is large and has a low dollar per poor person allocation. The need is great. Loyola is over one thousand miles from Nova (Ft. Lauderdale). Their proposal was rated by me as one of the best of all the proposals submitted. They plan to add 1 full-time and 2 part-time supervising attorneys. They have a novel approach of utilizing two part-time supervising attorneys in their offices. The project has very high case load (572 per year). Their clinical director has superior credentials.

REGION 4

I have recused myself. Tim Baker is presenting recommendations on two schools in this region.

REGION 5

Southern Methodist University $75,000. SMU may be getting about $25,000 in DOE funds. The committee also selected SMU but for only $50,000 so they could spread money to St. Mary's and Thurgood Marshall. But because of the DOE grants, we will have the funds to give $75,000 and the $50,000 won't do much for increasing the potential caseload. Their proposal was excellent in all ways. They are an independent program with superor in-house facilities and a super commitment from the law school. They serve the poor people in this area independtly of the program.

St. Mary's - $100,000. They were recommended for $50,000 by the committee and highly thought of. They have a superior joint program with the local legal aid office. If they get funded, they told me privately that they would like to develop an in-house clinic. They have a novel approach to serve the elderly and juvenile detainees. This area (San Antonio) is 55% Hispanic as well as the school. This is a poor area and a poor school with a great need.

REGION 6

Gonzaga - $75,000. They may be getting about $25,000 in DOE funds. The committee also recommended Gonzaga. I think that they submitted the best proposal of all. They have been consistently rated as a top clinic. The school has committed a good percentage of funds to clinical education. They will aim at the elderly and the delivery of legal services to develop mentally-disabled residents in Spokane County: They are an independent program.

REGION 7

Loyola of Los Angeles $75,000 - McGeorge $75,000. Both Loyola and McGeorge may be getting DOE funds.

The committee picked Loyola. The school has had a super commitment to clinical education. The Legal Aid Foundation of Los Angeles will share in the cost of the clinic's staff and overhead and will integrate the project into its private attorney involvement program. It is the only proposed project which will concentrate in only one area of law: unemployment law. No indirect costs will be charged by the university and United Way will contibute $42,700.

McGeorge had a excellent proposal to service an additional 200 law income clients annually. With two new staff members, they will increase there caseload to 950-1,050 clients each year. They will handle credit counselling, tenant assistance and domestic relations. All indirect costs are waived. They have a fascinating proposal for pro bono referrals to their alumni.

I didn't recommend Stanford although the committee did because the school has not shown a commitment to the clinic, even in its proposal. In view of the wealth of this school, it should be putting at least a million dollars in the project. However, all the funds are being raised by the students to operate the EAST PALO ALTO Community Law Project (EPACLP). The law school won't even be hiring new supervising attorneys but insisted on paying part of the salary of attorneys of EPACLP. A problem might also be presented because of their sliding scale proposal for fees.

The following two schools were recommended by the committee, but I have reservations and cannot recommend them until someone from my staff has visited them.

North Dakota. They have an interesting proposal that will provide guardian ad litems for the institutionalized. They project 900 cases per year. I would recommend $45,000 if a visit proves that they are of the quality we desire. They are too unknown.

If a visit proves fruitful, I would recommend a grant to Thurgood and Marshall for $45,000. The committee previously recommended them. Too many questions are unanswered such as: 1) the budget is not clear -- are our funds to pay for only a professor for one and half years; 2) what is their supervision rate; 3) will pairs of students handle cases; 4) "grudging" support of local program; and 5) why did the school back away from the support they used to give to the clinic. This proposal is the only one that I recommend that extra consideration be given to because it is a minority law school and is needed.

If North Dakota or Thurgood Marshall don't prove worthwhile, I would provisionally recommend Campbell College for $42,865. Someone from my staff would also have to visit them to evaluate their quality.

They had a fascinating proposal to provide routine services (wills, etc) to the dying (hospice program). It would be their very first clinic. Students would visit clients at the Hospice or probate offices of the courthouse. They plan to coordinate with the North Carolina Bar and district bars. They are very frugal with their funds and we would get a good return for our money. The only negative point from the committee was that no LSC field program was even mentioned. Obviously, they are a very independent school.

Funding all of my recommendations plus two of the three provisional recommendations would add up to $1.2 million dollars. We await your decision, then we will draft the letters notice and grant documents. We have to provide 30 days notice in the paper, etc.

ATTACHMENT 7

MEMORANDUM

TO: Donald P. Bogard
Executive Office

FROM: Charles T. Moses CM
Law School Clinical Program Director

RE: Region 4 Recommendation

DATE: May 15, 1984

As you know, Peter Broccoletti recused himself from examining the Evaluation Committee recommendations for Region 4. Tim Baker examined those recommendations in his place to make an official recommendation to you. Attached is a copy of Tim Baker's funding recommendation for Region 4 to be appended to the other recommendations. As you will note, he recommended Indiana University at Indianapolis, and Notre Dame University. This is slightly different from the Committee recommendation of Indiana/Indianapolis and the University of Chicago.

Attachment

ATTACHMENT 8

MEMORANDUM

TO: Peter Broccoletti, Director
Office of Program Development

FROM: Tim Baker
Office of Field Services

RE: Law School Legal Clinic Program Funding
Recommendations in Region 4

DATE: May 15, 1984

Per the agreement between the Office of Program Development (OPD) and the Office of Field Services (OFS), I was requested to participate in the law school legal clinic selection process. My role in this particular part of the process was to substitute for you in the review of grant proposals from region 4 and the attendant funding recommendations. I have reviewed the proposals of those law schools recommended by the committee and am prepared to make my recommendations. Before reaching a decision, I read not only those recommended by the committee but additional proposals from region 4 and other regions. Below I have set forth, law school by law school, those factors taken into consideration in making my recommendations.

Indiana University

The program described in the proposal submitted by Indiana University was preferred among those recommended by the committee for funding. In selecting this proposal, the committee cited the close working relatinship that legal clinic has with the local legal services program. It also noted that this program will expose the student to general practice. The committee gave good marks to the proposal for over-all quality.

Southern Illinois University

The committee ranked the proposal submitted by Southern Illinois University after University of Indiana and the University of Chicago. .It was not preferred for funding.

The proposal lists a substantial contribution by the law school ($89,794) and low indirect costs. It is unclear to what extent funding of the proposal will increase service delivery in the area. Although the proposal indicates that students may earn up to six credit hours per semester, it provides no information with respect to the amount of work required by the student intern. Furthermore, there is no indication of how many students they anticipate participating in the program. The program will be located at one site outside of the area proposed to be served. Although, there are some interesting aspects of the proposal, it is rather vague. It is difficult to assess the potential impact should LSC fund this proposal. I would concur in the committee's recommendation, and not recommend funding for this program.

The proposal makes clear the commitment of this law school to the legal clinic program. Students earn 4 credit hours per semester up to a total of 10 credit hours for work in the clinic. The 4-5 additional full-time students they anticipate joining the program will be expected to work 20 hours per week during the regular semester and 40 hours per week during the summer. The proposal envisions hiring additional staff to supervise the increase number of students. Given the number of hours estimated to be obtained in service delivery and the substantial financial committment that law shcool has made, the Indiana law school proposal, if funded, would leverage LSC resources and provide needed services to the area proposed to be served. I would endorse the committee's recommendation and fund the proposal at the full amount. I would, however, recommend that the OPD staff vigorously negotiate a real reduction of the indirect costs in the proposed budget.

University of Chicago

The committee gave preference to funding the program described in the proposal submitted by the University of Chicago. It cited the good faculty/student ratio, in-kind committment, and good case statistics. While the faculty/student ratio was impressive (1:12), there was no indication of how many hours student interns would work per week. In addition, there was no indication of how many credit hours a student could earn by participating in the program.

The University has made an apparent committment to the legal clinic program. However, it only proposes to contribute $39,000 in additional resources (University of Indiana's contribution will be $91,614). Furthermore, its indirect costs, 39% or $39,000, happen to equal the amount of its contribution. In comparison, Indiana's indirect costs are approximately 10% or $26,000. Although the program appears to be well-managed and providing services to clients, there seems to be little additional commitment on part of the law school. LSC could better utilize the funds than to allocate them to this program. I would reject the committee's recommendation and not provide funding for this proposal.

Notre Dame

Although the proposal from Notre Dame University was acknowledged by the committee to be good and worthy of funding, it was ranked lower than the previous two. The contribution that Notre Dame will make to the project described in the proposal ($59,282) is significantly higher than University of Chicago and its indirect costs are substantially lower (only 5%). It is obvious that this law school is committed to its legal clinic program. It has a department to coordinate many separate clinic programs.

The program proposed by this law school sets forth two models that will be implemented - The Battered Women's Program and the Cooperative Clinical Program. These two models will be incorporated into an already extensive variety of legal clinic programs. The proposal envisions an additional 10 interns who earn up to four credit hours per semester for work in the clinic (The University of Indiana proposal anticipates 4-5 additional full-time students). Sixty hours of field work are required for each semester hour of credit. The Battered Women's Program will work out of two locations and will involve 6 legal interns per semester and a supervising attorney.

The Cooperative Clinic program will work directly with the local legal services program, Legal Services Program of Northern Indiana (LSPNI). The law school will train approximately 4 students per semester who will work as interns at LSPNI. The interns will be supervised by LSPNI staff and the project will be overseen by the law school.

The Notre Dame proposal, which centers around two models providing a range of experiences for student interns, specifically identifies the resources which will be leveraged by a LSC grant. The contribution made by the institution is substantial and its indirect costs are very low. The commitment appears genuine and very strong. The proposal promises a good return in the form of services, and consequently, the Corporation ought to fund this proposal. I would recommend funding at the full level.

ATTACHMENT 9

MEMORANDUM

TO: Donald P. Bogard
Executive Office

FROM: Peter Broccoletti, Director PB
Charles T. Moses III, Consultant CTM
Office of Program Development

RE: Case-by-Case Analysis of Recommended Schools
for Law School Civil Clinical Project

DATE: May 24, 1984

Pursuant to your request of yesterday, please find attached a case-by-case analysis of those schools recommended for award of a Law School Civil Clinical Project grant. It is our belief that such a case-by-case analysis is unfair for the purpose of assessing output per dollar. Knowing that types of cases vary with individual schools, information necessary for such a comparison was not specifically requested in the solicitation package. Any comparison made as a result of the statistics found herein is even less standardized than if it had been requested in the solicitation. For example, it would be just as unfair to compare apples and oranges, as it would be to suggest that the University of North Dakota's projected output of 900 *gaurdian ad litem* cases would be of more value per dollar than Nova's 300 complex contested divorce cases involving child and spouse abuse, or vis-a-vis.

In addition, please keep in mind the scope and intent of this project that was specifically listed on page 2 of the request for proposals.

> This LSC intiative has been conceptualized to achieve four major goals:
>
> 1. Augment existing service delivery provided by current LSC grantees to the eligible client population; and
> 2. Enhance the capacity of law school programs to educate and sensitize the law students to legal issues most frequently affecting the LSC-eligible client population;
> 3. Create a future group of lawyers interested in providing legal services to poor persons, either as legal aid attorneys or through efforts of the private bar;
> 4. Increase cooperation between established law schools an all segments of the legal community.

The intangibles in this project are extemely important.

Region	Applicant	Projected Caseload for the 18 Month Period & Notes	Case Types
NATIONAL	George Washington Univ.	250 cases by placing students in rural legal aid programs 1984 Summer - 5 Students 1985 Summer - 20 Students	250 general cases completed and the students will work on additional files of other attorneys
1	Vermont Law School (R)	636 cases using 106 students	General
	SUNY - Buffalo (R)		
	Harvard University (A)	1,904 cases using 136 students (Appears very inflated)	Benefits, family law
	Franklin Pierce Law Center(A)	500 cases using 63 students	General
2	Univ. of North Carolina (R)	425 cases using 48 students	General
	University of Virginia (R)	Minimum of 400 cases using 85 students	Will handle total of family law cases referred by local program. This figure will probably be somewhat greater.
	Delaware Law School (A)		
	Campbell	120-160 clients having one or more cases using 40-80 students (some students may repeat)	Wills & probate for hospice
3	Nova Law School (R)	300 cases	Complex contested divorces involving child & spouse abuse (which take significantly more time)
	Loyola Univ./New Orleans (A)	572 cases	General

4	Univ. of Chicago (R)	Reluctant to provide information when called by OFD on telephone	Social Security or SSI Benefits
	Indiana Univ./Indianapolis(R)	360-450 cases using 24-60 students	Indianapolis Regional Office has adopted a system of priorities which are used
	South. Illinois Univ. (A)	-------------	General
	Notre Dame Univ. (A)	600 cases	
5	South. Methodist Univ. (R)	546-960 cases using 48 students	Wills & probate, gaurdianship, & misc. civil matters
	Thurgood Marshall School of Law (R)	81 cases using 54 students	Emphasis upon the elderly — including and also juvenile civil precedings, state hospital patients, wills, divorces, and benefits
	St. Mary's College (A)	750 completed cases and 1,000 partial cases	
6	Gonzaga Univ. (R)	600 cases using 60 students	Developmentally disabled individuals, family law matters, and elderly
	Univ. of North Dakota (R)	900 cases	gaurdian ad litem
7	Stanford Univ. (R)	160 cases	General
	Loyola Marymount/L.A. (R)	160 cases using 30 students	Unemployment clinic
	Univ. of the Pacific/ McGeorge School of Law (A)	300 complete cases and 1,500 telephone counselling using 45 students	Credit counselling

ATTACHMENT 10

MEMORANDUM

TO: Donald P. Bogard, President
Executive Office

FROM: Peter Broccoletti, Director
Office of Program Development

RE: Revised Law School Recommendations

DATE: May 25, 1984

Subsequent to my memorandum of May 11, 1984, in which I recommended that 17 schools be considered for funding and pursuant to the Law School Civil Clinical Project solicitation, I have revised my recommendation downward (as to your request) to a total of ten law schools. Below are listed the amounts and names of the law schools I hereby recommend following our discussion of May 24.

REGION	FUNDING AMOUNT	LAW SCHOOL
NATIONAL	$100,000	George Washington University
1	$ 75,000	Vermont Law School
2	$ 75,000	University of North Carolina
	$100,000	University of Virginia
3	$ 80,000	Nova Law School
	$100,000	Loyola University/New Orleans
4	$100,000	Notre Dame University
5	$ 75,000	Southern Methodist University
	$100,000	St. Mary's College
6	$ 75,000	Gonzaga University
7	$ 75,000	University of the Pacific/ McGeorge School of Law
TOTAL	$955,000	

ATTACHMENT 11

MEMORANDUM

TO: Donald P. Bogard
Executive Office

FROM: Charles T. Moses III
Office of Program Development

RE: DOE Law School Funding, and Loyola/New Orleans proposal

DATE: May 29, 1984

Pursuant to your request of this afternoon, attached is a listing of those schools recommended to you for funding by either Peter Broccoletti, or the Law School Evaluation Committee. I called the Department of Education this afternoon to confirm that their timetable for implementation has not been moved up; DOE still will not announce its funding levels until the end of June, 1984. Therefore, the attached funding figures are merely DOE Committee recommendations which are subject to final approval, and possible change. These funding levels will not have been announced by the time our original schedule calls for the LSC announcement.

I have examined the Loyola/New Orleans budget and supporting materials. Apparently, all indirect costs are going to be absorbed by the University, according to the footnote on the budget page. The cost letter was appended merely to demonstrate the value of the indirect cost which the University is willing to waive. Other than this cost waiver, the University is making no additional in-kind commitment.

LAW SCHOOL	REQUESTED DOE Funding	Recommended DOE Funding (has not been finalized)
1. George Washington University	30,000	0
2. Vermont Law School	30,000	25,004
3. SUNY/Buffalo	no request	
4. Franklin Pierce Law Center	27,100	19,600
5. Harvard University	30,000	0
6. University of North Carolina	30,000	26,000
7. University of Virginia	no request	
8. Campbell University	no request	
9. Delaware Law School	30,000	22,850
10. Nova University	30,000	18,000
11. Loyola/New Orleans	no request	
12. University of Chicago	30,000	22,500
13. University of Indiana/Indianapolis	no request	
14. University of Notre Dame	14,355	0
15. Southern Illinois University	no request	
16. Southern Methodist University	30,000	22,500
17. Thurgood Marshall School of Law	27,675	0

	LAW SCHOOL	REQUESTED DOE Funding	Recommended DOE Funding (has not been finalized)
18.	St. Mary's University	no request	
19.	Gonzaga University	25,000	23,000
20.	University of North Dakota	23,100	20,000
21.	Willamette University	no request	
22.	William Mitchell School of Law	29,500	0
23.	Stanford University	28,500	0
24.	Loyola Marymont	26,500	21,000
25.	University of the Pacific, McGeorge School of Law	24,873	24,873

LSC LITIGATION

QUESTION: Last year at this time, I inquired as to all the lawsuits the LSC had been defending itself against over the previous 18 months. I asked about the issues raised in each case, the status thereof, the rulings that had been handed down by the courts and their rationale, and the cost to the LSC (both in-house costs and those resulting from the contracting out of legal assistance). The answer to that set of questions was never provided.

Can you give them to me today?

Would you provide me with the answer to those questions in the immediate future, but covering the last 30 months?

ANSWER: Please see the attached charts. Also please note the answer to the second question on page 90.

Revised on 12/03/84

PENDING LAWSUITS AGAINST LSC

DATE FILED	CASE/COURT	ATTORNEY/FIRM	ISSUE/STATUS
10-10-83	Coalition for Leg. Svc. v. LSC. (U.S.D.C. - D.C.)	LSC - OGC (D. C. Crook, III) OPPOSING-Eric R. Glitzenstein (Pub. Cit. Litigation GP.;) Alan Houseman	Plaintiff obtained a TRO regarding a proposed 10-13-83 LSC Board of Directors meeting. LSC filed a counterclaim for: (1) declaratory judgment seeking a determination that it had acted properly under the law; (2) damages. Plaintiffs' "Motion for Summary Judgment" granted. LSC filed Notice of Appeal on 11-26-84. There is no potential monetary loss to LSC, save for the possibility of an award to plaintiff of attorneys fees and costs under the Act.
5-4-83	Collins v. Summit County, et al. (U.S.D.C. - Ohio)	LSC - John Kluznik; (Weston Hurd, Fallon) OPPOSING - Darryl E. Pitman	This is an action by a rejected applicant for a position of project director against the local program and LSC, alleging that her rejection was racially motivated. LSC's "Motion to Dismiss" is pending before the court. Potential liability is $250,000 compensatory damages, and $250,000 punitive damages, plus costs and fees.
9-23-83	East Ark. Leg. Svc. v. LSC, et al. (U.S.D.C. - D.C.) (U.S. Ct. of Appeals - D.C.)	LSC - OGC (D.C. Crook, III) OPPOSING - Mario Lewis; Alan Dockerman; and Thomas J. Mack.	Plaintiff obtained a final injunction and a declaratory judgment against LSC and its officers regarding proposed recoupment of FY 1982 "fund balances" from EALS. LSC filed a notice of appeal with the U.S. Ct. of Appeals - D.C. Circuit. There is no potential monetary loss to LSC, save for the possibility of an award of counsel fees and costs to EALS. Decision entered on 8/28/84 affirming District Court. Petition for Rehearing was filed on 9/27/84; denied 10/16/84. LSC to file petition for writ of cert. by 1/14/85.
4-22-81	Gautreau v. LSC, et al. (State Court - La.)	LSC -J. Walter Wilkerson (Douglas & Wilkerson)	A suit against the Corporation and a defunded program for wrongful termination of the program's former director. Plaintiff has made no effort to move the case for over a year. The plaintiff is asking for $40,000. No trial date set.

PENDING LAWSUITS AGAINST LSC

DATE FILED	CASE/COURT	ATTORNEY/FIRM	ISSUE/STATUS
11-01-84	Gilbert & Newman v. LSC, Bogard (U.S.D.C. - D.C.)	LSC - Thompson, Mann & Hutson OPPOSING - Crowell & Moring	Plaintiffs, former Regional Directors, are suing L.S.C., Board, and Potack for wrongful discharge and declaratory judgments. Plaintiffs seek $14 million in compensatory and punitive damages. LSC to file appropriate Motion/Answer.
4-23-84	Jarvis, et al. v. LSC, et al. (Sup. Ct. - Los Angeles County)	LSC - John Mueller (Nielsen, Hodgson, Parrinello & Mueller) OPPOSING - Lawrence Straw, J. Otamura-Kester, (Smaltz & Neeley) and Trevor Grim (Kaplanis & Grimm)	Plaintiff is seeking monetary damages against LSC, Western Center and Legal Aid Foundation of Los Angeles claiming violations of the California Political Practice Act. Western Center's demurrer was granted and the action has been stayed pending resolution of plaintiff's appeal in the U.S. Court of Appeals - 9th Circuit.
12-20-83	Jarvis v. Regan, et al (U.S.D.C. - Calif.)	LSC - J.E. Mueller (Nielsen, Hodgson, Parrinello & Mueller)	Plaintiff sought injunction and monetary damages against two grantees, LSC and Sec. of Treasury claiming violations of LSC Act, R.I.C.O. statute and Calif. Political Practice Act. Court granted all motions to dismiss. Plaintiff filed "Notice of Appeal" with U.S. Court of Appeals - 9th Circuit in June, 1984. Briefing underway by all parties. 1985 argument date.

PENDING LAWSUITS AGAINST LSC

DATE FILED	CASE/COURT	ATTORNEY/FIRM	ISSUE/STATUS
3-5-81	Kaimowitz v. Howard, et al. (U.S.D.C. - Michigan) (U.S. Ct. of Appeals - 5th Cir.)	LSC - OGC; Mark Senger OPPOSING - Gabe Kaimowitz (Puerto Rican Leg. Def. & Education Fund)	Case filed by wife of a former legal services attorney against a school district for employment discrimination. Plaintiff was represented by her husband on his own time. The case was not a program case. Plaintiff lost at trial, and fees and costs were assessed against her. Plaintiff moved to implead the Corporation on the theory that because her attorney was employed by a recipient while he was representing her, the Corporation was liable for fees assessed against her. Plaintiff's claim was dismissed by the district court, and her appeal to the U.S. Court of Appeals for the 5th Circuit is pending. Fees and costs assessed in this action amount to $4,866.40 against plaintiff. LSC was not a party to the lower court case; merely an amicus.
2/81	Locricchо v. LSC, et al. (U.S.D.C. - Hawaii)	LSC - Roy Hughes; Craig Forushu	Complaint by former director against the Corporation, employees and former employees for defamation and interference with contract. Individual defendants have been dismissed. Plaintiff has asked for $1,500,000 in actual and punitive damages. Trial date set for March, 1985.
12/80	LSC v. Berkeley Neighborhood Legal Svcs. (Superior Court - Alameda County, CA)	LSC - Wm. K. O'Brien OPPOSING - Robert L. Valencia (Berkeley Neighborhood Legal Legal Services)	A quiet title action to determine ownership of real property purchased with LSC funds by a subsequently defunded grantee. Discovery is underway by counsel. Settlement conference on 1/16/85. Trial date of 1/28/85.
1-15-82	McCalpin, et al. v. Masson, et al. (U.S.D.C. - D.C.) (U.S. Ct. of App. - D.C.)	LSC - (Richard Willard (Dep. Asst. Atty. Gen) OPPOSING - Joseph M. Hassett (Hogan & Hartson)	Suit brought by holdover LSC Board of Directors challenging the authority of the President of the U.S. to make recess appointments to the LSC Board. Plaintiffs application for TRO and "Motion for Injunction" denied by district court which held President had authority to make appointments. Plaintiff appealed to U.S. Court of Appeals - D.C. Circuit; briefs filed; oral argument held; case "under advisement."

PENDING LAWSUITS AGAINST LSC

DATE FILED	CASE/COURT	ATTORNEY/FIRM	ISSUE/STATUS
1-18-84	Mass. Law Ref. Inst. v. LSC (U.S.D.C. - D.C.) (U.S. Ct. of App. - D.C.)	LSC - E.J. Branfman, Joel P. Bennett (Bennett, Deseo, Greenberg & Thomas) OPPOSING - Charles A. Horsky, P.J. Tagliabue, S. D. Winner (Covington & Burling)	Plaintiffs sought and were granted a preliminary injunction requiring LSC to refund four regional training centers under P.L. 98-166 and their grant documents. Injunction was affirmed by U.S. Court of Appeals on June 14, 1984, and remanded to the district court for hearing on the merits. Motions for summary judgment filed Oct 1, 1984. LSC's reply filed October 25, 1984.
1-4-84	In re Denial of Refunding of the NCC	LSC -Victor Fortuno (OCR) Carl Rauh (Dunnels, Duvall Bennett, & Porter) OPPOSING - Peter Nickles (Covington & Burling)	Denial of Refunding of National Clients Council. Awaiting recommended decision of hearing officer.
12-28-83	Nat'l Senior Cit. Law Ctr. v. LSC (U.S.D.C. - D.C.) (U.S.Ct. of App. - D.C.)	LSC - Joel P. Bennett (Bennett, Deso, Greenberg & Thomas) OPPOSING - R. Cotton, K. G. McAnaney, K. Fischler (Dewey, Ballantine, Bushby, Palmer & Wood)	Plaintiffs sought and were granted a preliminary injunction preventing LSC from implementing Instruction 83-9. LSC appealed and briefs have been filed with the U.S. Court of Appeals - D.C. Circuit. Oral argument held on November 30, 1984.
6-29-83	NOLSW v. LSC	LSC - Thompson, Mann & Hutson OPPOSING - Eugene E. Eisner; James Braude	The Nat'l Organization of Legal Services Workers filed a certification petition with the NLRB seeking to represent certain LSC employees. Proceedings were conducted by a hearing examiner in August 1983. Upon motion, the case was referred to the full NLRB. Both sides have filed briefs and a decision from the Board is pending.

PENDING LAWSUITS AGAINST LSC

DATE FILED	CASE/COURT	ATTORNEY/FIRM	ISSUE/STATUS
8-22-84	Patrick, et al. v. LSC (State Court - La.)	LSC - Phillip L. McIntosh OPPOSING - B. James Lossin, Sr.	Suit by contract interim provider of legal services and wife for wages, penalties and damages for breach of contract. Plaintiffs seek a judgment for $108,390.00 plus attorney's fees. Settlement pending.
3-20-85	Joan Peternell v. LSC	LSC - Richard Bagenstos W. R. Wylie, Jr. OPPOSING - Pro se	Plaintiff alleges that LSC failed in a duty to provide her an attorney pursuant to LSC Act. LSC has filed a Motion to Dismiss since there is neither a duty nor power to "give [her] an attorney." MTD currently pending.
4-8-82	Porter v. Summit County Leg. Svc., et al. (U.S.D.C. - Ohio)	LSC - John Kluznik; Andrew Buckner (Weston, Hurd, Fallon, Paisley & Howley) OPPOSING - Kenneth Motack	Former program director is suing the program, a board member, LSC and two employees for race discrimination in connection with his discharge. Plaintiff seeks $3,000,000 compensatory and punitive damages. Suit is in the "discovery" phase. LSC has filed a "Motion to Dismiss," which is pending.
9-19-84	Price v. LSC Ct. of Common Pleas, Philadelphia County;	LSC - Paul Diamond/Michael Krancer, OPPOSING - Kenneth Motlack	Complaint filed. Answer filed. Plaintiff seeks $2,700.00 severance payment claiming that her position was abolished and irreconcilable personality conflict with Director of OPS. Plaintiff has filed Interrogatories and Request for Production of Documents.
8-22-84	Reeves, et al. v. LSC (State Court - La.)	LSC - Phillip H. McIntosh OPPOSING - H. James Lossin, Sr.	Suit by contract interim provider of Legal Services and husband for wages, penalties and damages for breach of contract. Plaintiffs seek a judgment for $101,732.00 plus attorney fees. Suit pending.
10-22-84	Samy, et al. v. LSC, et al (U.S.D.C. - E.D.N.Y.)	LSC - Jeffrey Bragman OPPOSING - Pro se	Plaintiff is suing civil judges of New York State system, Attorney General of New York State, and LSC. Complains about the handling of his landord/tenant case, which was dismissed in state court.

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PENDING LAWSUITS AGAINST LSC

DATE FILED	CASE/COURT	ATTORNEY/FIRM	ISSUE/STATUS
1-16-85	Sonsksen v. LSC, et al.	LSC - William Dave OPPOSING - William H. Michaelson	Case involves allegation of harassement and malicious prosecution by a recipient based in Des Moines, Iowa. LSC jointed based on LSC Act. Primarily, a request for attorney's fees. Previous rulings by Court held that Sonksen not entitled to a reward of atty's fees.
7-1-83	Ullman v. Grandjean (U.S.D.C. - Ohio)	LSC - Kennedy Legler (Legler, Poulton & Singer) OPPOSING - Victoria E. Ullman, pro se, S. E. Chaffin, pro se (Comm. Law Ctr., Dayton, Ohio)	Plaintiffs, former staff attorneys, seek compensatory and punitive damages against the local program, the executive director, and LSC for "wrongful discharge" and Title VII violations. LSC's "Motion to Dismiss" is pending.
2/84	West. Ctr. on Law & Poverty v. LSC (U.S.D.C. - D.C.)	LSC - Joel P. Bennett (Bennett, Deso, Greenberg & Thomas); OPPOSING - Mary Burdick, Richard A. Rothschild; (WCLP) Max L. Gillam, I. Goldbloom and N. Scneurwater; (Latham, Watkins & Hills)	Plaintiff has filed a complaint seeking continued funding under P. L. 98-166 and a judicial reversal of the defunding decision by the LSC President. Pending before the lower court plaintiff's "Motion for Partial Summary Judgment and Preliminary Injunction" and LSC's "Opposition" thereto. A TRO was entered against LSC. Preliminary injunction entered on 7/13/84. Motions for Summary Judgment and Opposition filed 9/24/84. Reply to WCLP motion filed on October 25, 1984.

QUESTION: With regard to the lawsuits resulting from the firing of Paul Newman and Dave Gilbert, please indicate whether (a) Mr. Bogard and Mr. Potack have been indemnified for their actions, and (b) what legal costs the LSC has borne in their behalf?

ANSWER: Both Mr. Bogard and Mr. Potack have received a conditional indemnification from Legal Services Corporation, contingent upon a finding that Mr. Bogard and/or Mr. Potack acted in good faith in these transactions. That indemnification further provides that the Legal Services Corporation will reimburse Mr. Bogard and Mr. Potack for expenses incurred with regard to this litigation, including attorney's fees, subject to reimbursement of the Corporation by the individuals upon a finding of bad faith. To date, Legal Services Corporation has paid the following expenses on behalf of Mr. Bogard and Mr. Potack:

Mr. Bogard	$ 9,759.86
Mr. Potack	$31,110.60

QUESTION: Would you provide this Committee with the costs borne by the Corporation over each of the last 5 fiscal years, including an FY 1985 estimate, for legal defense?

ANSWER: Costs borne by the Corporation over each of the last 5 years for legal defenses, including an FY 1985 estimate, are as follows:

FY 1980	$ 72,723.00
FY 1981	84,519.00
FY 1982	49,416.00
FY 1983	211,869.00
FY 1984	581,944.00
FY 1985	450,000.00

QUESTIONS SUBMITTED BY SENATOR ARLEN SPECTER

QUESTION: In response to a letter from Representative Kastenmeier, the Legal Services Corporation stated in reference to migrants:

> "...(T)he Board can assure Congress that no changes in the delivery system will be made until a study (of the number of migrants) has been complete, analyzed and fully discussed with Congress."

Yet you have voted to cut funding for migrant programs by 21.6% and no such study has been made. I am advised that as many as 20 of the 34 existing migrant programs could be severely damaged or destroyed by this cut. Does this constitute a change in the delivery system? How can you justify such a severe cut justifiable in the absense of an adequate study?

ANSWER: The Board has studied this issue and every facet of the budget extensively. Three separate hearings were held, all interested parties were invited to testify or submit comments and information and thousands of pages were read. Based upon that review it was determined that migrants are double funded. They are counted in the 1980 Census data which is used to fund our basic field programs. In addition, (41) forty-one field programs also receive special migrant grants.

The Board also learned that the revised 1977 Lillesand estimate of 1,000,000 migrants used to fund our programs may overstate the actual numbers of migrants considerably. Recent studies by the Department of Agriculture and the Department of Health and Human Services estimated 226,000 and 800,000 migrants respectively. The numbers of migrants also appears to be declining. In 1965 the Department of Agriculture estimated 466,000, by 1983 the number dropped to 226,000.

The 21.6% reduction in migrant funding will not require the elimination of any migrant programs. The total cut in migrant funding will only be $2 million while basic field funding is being increased $11.3 million. In 41 of 43 instances, migrant units are a component of a basic field program. Because basic field is being increased, these programs will have more monies available to serve all their clients, including migrants. In fact, the migrant programs which currently receive the least funding will be impacted less severely than the large, well-funded programs because the increase in basic field funding to the low-funded migrant programs will greatly exceed the cuts in migrant funding. Accordingly, we do not believe this would result in a change in the delivery system.

LSC PRESIDENTIAL SELECTION

QUESTION: How important is it that the new president be capable of gaining the confidence of those who work in the field offices of LSC programs? What traits do you think an applicant must have in order to win that confidence?

ANSWER: Very important

A willingness to listen and learn.

THE CONSOLIDATION OF REGIONAL OFFICES

QUESTION: Do you intend to abolish the LSC's regional offices? If so why? Will the Philadelphia regional office be abolished. When will a final decision be made regarding a continuation of these offices?

ANSWER: The regional reorganization proposal, which is part of the OFS reorganization, is on the Board of Director's agenda for its May 24 meeting. If a reorganization is voted on and passed, then a 15 day notice will be given to the appropriate

Congressional Committees under established reprogramming procedures.

The staff recommendation is for a reorganization of the current Regional Office structure, reducing the current nine office structure -- Seattle, San Francisco, Denver, Chicago, Atlanta, Philadelphia, New York, Boston, and Northern Virginia (D.C.) -- to a four office structure retaining San Francisco, Denver, Chicago, and Atlanta and administering the Northeast from the Washington, D.C. Headquarters. A copy of this staff recommendation was submitted to the Subcommittee for the record of the April 24, 1984 hearing.

Under the Corporation's current management and administrative budget of approximately $11.8 million, it is not possible to staff nine Regional Offices adequately; the Corporation's FY 1986 management and administration budget is planned to be $10.7 million. Of this reduction, an annualized $400,000 will be derived directly from closing the Seattle, Philadelphia, New York, and Boston offices; a substantial portion of these savings come from no longer leasing space in nine different locations around the country.

Although budgetary considerations are important, there are equally significant management reasons for this reorganization. Offices with fewer than 5 or 6 people are generally ineffective; at present the Corporation has a total of 33 people scattered among nine Regional Offices. Under the reorganization, the Corporation will have 29 people in four Regional Offices, each of which will have sufficient staff to operate effectively. Furthermore, under the current structure, there are great disparities in workload among the regions; under the proposed reorganization, the workloads are much more comparable. Furthermore the two western most regions, which have the fewest recipient programs, have a corresponding larger geographical area to cover.

This reorganization also minimized displacement of staff; of the four offices abolished, Boston has no permanent employees, New York has three, Philadelphia two, and Seattle two.

In conclusion, the Corporation staff recommended this plan to the Board because it is the best way to get increased efficiency out of limited resources while minimizing disruption of Corporation operations in the transition. Without this reorganization it would be nearly impossible to stay within the Corporation's planned 1986 management and administration budget while performing the management and oversight functions which are the responsibility of the Corporation under the Legal Services Corporation Act.

CHOICE OF LEGAL SERVICES PROVIDERS

QUESTION: In your testimony last week before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, you stated that "the poor should have an opportunity to choose from several providers of legal services." How do you believe the LSC should foster that goal? Would you favor issuing eligible clients vouchers to be used for legal services, rather than having individual staff programs? Should LSC fund competing organizations in the same geographic area?

ANSWER: A few months ago, I received a letter from Senator Warren B. Rudman in which he stated that "it would be an excellent idea if the Corporation were to look into the possibility of developing outside funding sources, especially sources of income which are renewable, long-term and not dependent on annual decision-making". The Senator's suggestion is consistent with my goal of maximizing access to justice by developing effective and creative alternatives in legal services delivery. Achievement of the goal would encourage the continuation of legal assistance to the poor by decreasing the current dependency on Congressional appropriations. One of the exciting results of "maximizing access" is the possibility of providing a choice of legal assistance programs to low-income persons.

While I am uncertain as to which models of legal assistance delivery may be the most efficient and effective, I am not opposed, as a general proposition, to the introduction of competition into the delivery system.

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

NEW BUDGET FORMAT

IN SEPTEMBER 1984, LSC ADOPTED A REVISED BUDGET FORMAT FOR THE CONSOLIDATED OPERATING BUDGET. THIS NEW FORMAT WAS USED IN THE LSC BUDGET REQUEST FOR FY 1986, YET THERE IS NO EXPLANATION THAT THE FORMAT IN THIS BUDGET REQUEST IS SIGNIFICANTLY DIFFERENT FROM PREVIOUS YEARS, NOR HAVE YOU PROVIDED CROSSWALKS DISPLAYING THE INFORMATION IN BOTH THE OLD AND NEW FORMATS. THIS FORMAT MAKES COMPARISON WITH PREVIOUS BUDGET REQUESTS DIFFICULT IF NOT IMPOSSIBLE. IT ALSO MAKES IT DIFFICULT, IF NOT IMPOSSIBLE TO DETERMINE WHETHER THE FY 1985 APPROPRIATION WAS PROPERLY ALLOCATED.

QUESTION: WHY DID YOU SUBMIT THIS BUDGET REQUEST IN A NEW FORMAT WITHOUT PROVIDING ANY EXPLANATION?

ANSWER: On September 18, 1984, the Corporation submitted to both the Senate and House Appropriations Committees notice of the new budget format with the 1984 and the 1985 appropriations restated in the new format. In addition, the 1986 budget request was displayed in the new format, with both the 1984 and 1985 budgets restated in the new format for comparison. The Corporation believes that sufficient information has been provided for comparison.

QUESTION: WHAT STEPS WILL YOU NOW TAKE TO ENSURE ADEQUATE INFORMATION SO THERE IS NO INTERFERENCE WITH OUR OVERSIGHT RESPONSIBILITIES?

ANSWER: The Corporation does not believe that any steps other than those that are normally taken are required to ensure that the oversight responsibilities of the Congress are maintained.

QUESTION: WILL YOU PROVIDE US WITH CROSSWALKS TO COMPARE WITH PREVIOUS REQUESTS?

ANSWER: Attached is a crosswalk in the same format as those submitted to the Committee in September, 1984, to show the 1986 request restated into the old budget format.

LEGAL SERVICES CORPORATION CONSOLIDATED OPERATING BUDGET CROSSWALK FISCAL YEAR 1986 BUDGET REQUEST

OLD C.O.B. FORMAT		KEY TO NEW COB
I. PROVISION OF LEGAL ASSISTANCE	$294,300,000	
A. FIELD PROGRAMS	$274,077,105	
1. Basic Field Programs	258,262,129	I.A.1.
2. Native American Programs and Components	7,022,148	I.A.2.
3. Migrant Programs and Components	7,604,717	I.A.3.
4. Client Training and Involvement	0	II.A.3.
5. Reserve for Special Adjustments	44,736	I.A.4.
6. Supplemental Field Programs	1,143,375	I.C.3.
B. NATIONAL AND STATE SUPPORT	$15,723,346	
1. National Support	6,673,968	II.B.1.
2. State Support	8,183,732	II.B.2.
3. Clearinghouse	865,646	II.B.3.
C. SPECIAL PROGRAMS	$672,127	
1. National Clients Council	597,693	II.B.4.
2. R. H. Smith Fellowships	0	I.C.1.
3. Summer Internships	74,434	I.C.2.
D. PROGRAM MAINTENANCE AND IMPROVEMENT	$881,247	
1. CALR Grants	503,967	II.B.5.
2. Technical Assistance	125,760	II.A.2.
3. Training Development	251,520	II.A.1.
E. DELIVERY RESEARCH AND EXPERIMENTATION	$1,434,154	I.B.
F. REGIONAL TRAINING CENTERS	$512,021	II.A.4.
G. SPECIAL ELDERLY PROGRAMS	$1,000,000	II.B.6.
II. SUPPORT FOR THE PROVISION OF LEGAL ASSISTANCE	$10,700,000	III.
A. OFFICE OF FIELD SERVICES	undistributed	
B. MANAGEMENT AND ADMINISTRATION	undistributed	
TOTAL	$305,000,000	

NEW C.O.B. FORMAT

I. DELIVERY OF LEGAL ASSISTANCE	$275,585,693
A. FIELD PROGRAMS	$272,933,730
1. Basic Field Programs	258,262,129
2. Native American Programs and Components	7,022,148
3. Migrant Programs and Components	7,604,717
4. Reserve for Special Adjustments	44,736
B. PROGRAM DEVELOPMENT	$1,434,154
C. SUPPLEMENTAL SERVICE PROVISION	$1,217,809
1. R. H. Smith Fellowships	0
2. Summer Internships	74,434
3. Supplemental Field Programs	1,143,375
II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	$18,714,307
A. TRAINING AND TECHNICAL ASSISTANCE	$889,301
1. Training Development	125,760
2. Technical Assistance	251,520
3. Client Training and Involvement	0
4. Regional Training Centers	512,021
B. OTHER SUPPORT	$17,825,006
1. National Support	6,673,968
2. State Support	8,183,732
3. Clearinghouse	865,646
4. National Clients Council	597,693
5. CALR Grants	503,967
6. Special Elderly Programs	1,000,000
III. CORPORATION MANAGEMENT & GRANT ADMINISTRATION	$10,700,000
TOTAL	$305,000,000

FROZEN BUDGET ITEMS

FOR FY 1985, CONGRESS IMPOSED A FREEZE ON THE BUDGET LINES "PROGRAM MAINTENANCE AND IMPROVEMENT" AND "DELIVERY RESEARCH AND EXPERIMENTATION." THESE CATEGORIES HAVE BEEN CHANGED AND THE SUBCATEGORIES REALIGNED.

QUESTION: WHY WERE THESE CHANGES MADE?

ANSWER: The budget was reformatted in order to display more accurately the disposition of our funding.

QUESTION: WON'T THESE CHANGES RAISE AN IMPLICATION THAT YOU ARE TRYING TO EVADE THE FREEZE IMPOSED BY CONGRESS?

ANSWER: No. One category, Delivery Research and Experimentation, has simply been renamed Program Development. The other category, Program Maintenance and Improvement, has been divided into a more functionally accurate distribution. The crosswalks that have been provided to the Committee and that which accompanies these questions should satisfy the Committee that there is no intention to evade the limitation on "frozen items".

QUESTION: ARE WE ASSURED THAT THESE BUDGET CATEGORIES WILL NOT BE IMPROPERLY EXCEEDED IN 1985?

ANSWER: The Committee can be assured that these budget categories will not be the subject of expenditures in excess of authorized levels.

LSC'S CARRY-OVER FUNDS

FOR TWO YEARS, LSC HAS HAD CARRYOVER FUNDS IN EXCESS OF $5 MILLION. THE 1983 CARRY-OVER FUNDS WERE $5.7 MILLION; AND $5.4 MILLION FOR 1984. IN BOTH YEARS, THESE FUNDS WERE GENERATED FROM BUDGET LINES CONTROLLED BY LSC STAFF. IN BOTH YEARS THE THIRD QUARTER BUDGET REVIEW PREDICTED A SIGNIFICANTLY LOWER CARRYOVER. IN BOTH YEARS, THE CARRYOVER FUNDS REMAINED UNALLOCATED FOR AT LEAST FIVE MONTHS.

QUESTION: WHEN AND HOW DO YOU PLAN TO ALLOCATE 1984 CARRY-OVER FUNDS?

ANSWER: The staff has made a recommendation to the Board for allocation of the 1984 carryover funds. The Appropriations and Audit Committee of the Board has taken the matter under advisement and has it on the agenda for its May 23, 1985 meeting. The Committee will be informed of the Board's final allocation of the carryover, and, certainly, any items that require 15 days notice under the reprogramming provisions. A copy of the staff recommendation was submitted to the Committee for the record of the April 24, 1985 hearing.

QUESTION: WHAT STEPS DO YOU INTEND TO TAKE TO ENSURE BETTER BUDGET PROJECTIONS?

ANSWER: The Corporation has adopted in 1985 a new internal budget process that is designed to identify possible surpluses at a much earlier time. As this process matures, each quarterly review will "shake out" any funds that are allocated to operating divisions, but cannot be used in a given fiscal year.

QUESTION: WHAT STEPS DO YOU INTEND TO TAKE TO AVOID SUCH A LARGE AMOUNT OF UNEXPENDED FUNDS STAYING AT HEADQUARTERS WHILE FIELD GRANTEES AND, THEREFORE, CLIENTS ARE NOT BEING SUFFICIENTLY SERVED DUE TO LACK OF FUNDING?

ANSWER: My understanding is that historically this is not a large carryover amount. In 1979, the Corporation had a carryover in excess of $16 million. Nevertheless, we do intend to have a carryover significantly lower than the budget projections for this year.

At this time, the Board has a recommendation under consideration and that recommendation is on the agenda for the May 24, 1985 Board meeting.

QUESTION: WHY NOT ALLOCATE THESE FUNDS IMMEDIATELY TO FIELD PROGRAMS TO ENABLE THEM TO SERVE MORE POOR PEOPLE?

ANSWER: The Board must allocate the carryover funds, and does so after considering the recommendations of the Corporation staff and outside parties. All possible uses of the funds are weighed in order to arrive at a fair allocation.

QUESTION: IN YOUR FY 1986 BUDGET REQUEST, YOU ANTICIPATE ANOTHER FUND BALANCE OF $5 MILLION (P. 46) AT THE CLOSE OF FY 1986. WHY?

ANSWER: Historically, the Corporation has always carried a small amount of funds over from one year to the next. The reasons for carrying over funds are numerous. An estimate was made in the Budget Justifications solely for the purpose of identifying that there is a likelihood that some amount will, in fact, be carried over. The Corporation's Federal Appropriation fund balance has ranged from a high of $16,124,317 (6.0%) in 1979 to a low of $2,180,577 (0.9%) in 1982. The 1985 estimate of $5,000,000 (1.6%) is a reasonable target, considering these extremes.

ALLOCATION OF FY 1984 CARRY-OVER FUNDS

QUESTION: AFTER TWO YEARS OF HAVING VERY LARGE FUND BALANCES UNDER THE "PROGRAM DEVELOPMENT AND EXPERIMENTATION" LINE ITEM, WHY IS IT THAT LSC IS CONSIDERING PUTTING $1.265 MILLION MORE OF FY 1984 CARRY-OVER FUNDS IN THIS ACTIVITY. SINCE IT LOOKS LIKE YOUR AGENCY HAS A PROBLEM MAKING CONTRACTS WITH PRIVATE LAW FIRMS, WHAT MAKES YOU THINK YOU CAN ACCELERATE THE ACTIVITIES THIS YEAR?

ANSWER: The projects funded under this category are designed to expand the delivery of legal services through mechanisms other than the staff attorney model. LSC is charged with the responsibility of finding the most efficient means for the delivery of service, and it is only through actual field testing of alternative models, that an accurate analysis can be made. The amount of carryover funds proposed by the staff for allocation to Program Development is less than 0.7 percent of the 1985 allocation for Field Programs. The Corporation believes that the types of projects planned for 1985 can be started quicker than in 1984, primarily because of the experience factor involved in setting up the programs.

QUESTION: IN THE FY 1985 APPROPRIATION, THE CONGRESS "FROZE" LSC MANAGEMENT AT THE 1984 LEVEL. OUR MESSAGE TO THE CORPORATION WAS IT SHOULD PUT ITS OWN HOUSE IN ORDER FINANCIALLY. NOW YOUR STAFF IS RECOMMENDING THE TRANSFER OF UP TO $1.7 MILLION TO MANAGEMENT AND ADMINISTRATION. IN MY MIND, THIS IS NOT CONSISTENT WITH THE WILL OF CONGRESS. WHAT CAN YOU PROVIDE TO CONVINCE ME THAT THESE FUNDS SHOULD NOT GO TO BASIC FIELD PROGRAMS FOR DIRECT DELIVERY TO CLIENTS?

ANSWER: The staff is not recommending to the Board that any carryover funds be transferred into Management and Administration. The staff has recommended the retention of $1.7 million in order to accommodate several major programs that could not be accommodated within the $11.3 million that the Corporation requested, and the Congress allowed, for FY 1985. These include a major monitoring effort, designed to last for twelve months. This effort will bring the Corporation's monitoring schedule up to date and establish an eighteen month cycle for monitoring each recipient.

QUESTION: AS OF SEPTEMBER 30, 1984, THE CORPORATION HAD ACCUMULATED $466,635 IN INVESTMENT INCOME. THE LSC STAFF VIEWS THIS AS A CONTINGENCY FUND. SEVERAL YEARS AGO THE CORPORATION WAS RIGHTFULLY CRITICAL OF THE LARGE BALANCES THAT SOME OF THE LOCAL PROGRAMS HAD SQUIRRELED AWAY. IS NOT THE CORPORATION NOW GUILTY OF THE SAME CHARGE IN NOT USING THESE BALANCES?

ANSWER: No. The unallocated investment income is just slightly over 4 percent of the Corporation's operating budget for FY 1985. This is not an excessive amount to hold in reserve. Programs are allowed to retain a 10% fund balance. The Corporation believes, as Senator Bumpers pointed out during the hearing on LSC's budget request, that pressure to eliminate fund balances or to end the year with very low fund balances encourages unwise spending. The programs are allowed a very liberal percentage in order to avoid such practices. The Corporation must retain funds to pay contracts that cannot be expensed in one fiscal year due to the accounting procedures we follow. The Corporation should not operate in such a way as to manage its resources poorly solely to end a year with a smaller fund balance.

LSC'S MANAGEMENT AND ADMINISTRATION BUDGET

QUESTION: IN BOTH FY 1984 AND FY 1985, THE CORPORATION ACCUMULATED SIGNIFICANT CARRY-OVER FUNDS IN THE BUDGET ITEMS WITHIN ITS DISCRETION. GIVEN THAT

BACKGROUND, WHY ARE YOU REQUESTING TO CUT YOUR BUDGET BY ONLY 5.2%, WHILE CUTTING OTHER FIELD FUNCTIONS AS MUCH AS 21.6%?

ANSWER: In FY 1984 the Corporation did, in fact, generate a sizeable fund balance within the Management and Administration portion of the budget. FY 1985 is only half over, and we will not presume that we will accumulate "significant carry-over funds" for this year. Our request is predicated upon certain cost savings, offset by certain built-in cost increases in FY 1986. We believe that we can operate in FY 1986 at a level 5.2 percent lower than that in FY 1985. On the other hand, it must be noted that the sole source of LSC's operating funds is its Federal appropriation; this is not the case with our grantees, which have access to numerous sources of funds over and above the LSC grant. In addition, the basic field programs are scheduled for increased funding under the FY '86 proposal, not for a cut.

COVERAGE OF LEGAL SERVICES

QUESTION: PRIOR TO THIS ADMINISTRATION WE WORKED FOR AND ATTAINED THE GOAL OF 2 LAWYERS PER 10,000 POOR PEOPLE. HOW MANY LAWYERS PER 10,000 POOR PEOPLE DOES THE LSC APPROPRIATION NOW PROVIDE? WHAT IS THE RATIO WHEN CONSIDERATION IS GIVEN TO THE LOCAL SERVICES THAT ARE SUPPORTED BY OTHER FUNDING SOURCES?

ANSWER: At the end of 1984, LSC grantees reported that they had budgeted funds for the fulltime equivalent of 1.720 attorneys per 10,000 poor persons. The 1985 appropriation increases the funding available for attorneys at the state and local level by 6.69%, so the number of attorneys could be estimated to be 1.835 per 10,000 poor in 1985, assuming no change in average salaries or staffing structure. The 1986 appropriations request incorporates a shift in resources to basic field programs equivalent to the expected rise in the cost of living, so the number of attorneys should remain approximately the same.

The figures cited above are conservative in comparison with those reported by the Corporation in past years. We have not counted project directors who were not attorneys and we have adjusted the number of attorneys to account for the fact that 376 of the staff attorneys reported are part time. At the same time, the staff attorneys on salary are supported by 87.5% of the LSC grant funds, since LSC regulations require that 12.5% of the basic field grants be employed to support the work of private attorneys. We have adjusted the number reported upward accordingly. Following LSC's past practice, we are utilizing the decennial census poverty count which results in a probable understatement of the number of poor persons in 1985.

The figures cited above include all staff attorneys reported by LSC grantees, regardless of funding source. We are currently working on a computer program written to separate those attorney positions funded with LSC funds and those funded with outside funds, but have not yet generated that information. If one were to assume that the number of LSC funded positions was in direct proportion to the ratio of LSC funding to total funding of LSC grantees (just over 80%), the number of attorneys per 10,000 supported by LSC funds would appear to have been about 1.374 at the end of 1984. At the same time, since non-LSC funding increased 32.5% between 1984 and 1985, the total number of attorneys per 10,000 estimated above probably understates that number. In fact, overall funding for LSC grantees has increased 11.5% over 1984, so the total number of attorneys per 10,000 should probably be estimated at 1.918 per 10,000 poor people in 1985.

There are many other attorneys serving the poor who do not do so in a direct relationship with a legal services grantee. The ABA reports that 77,000 attorneys are involved in organized pro bono work, much of it through local bar associations not supported by LSC funds. Surveys of the Illinois and Florida bars suggest that there are many many more attorneys doing pro bono work who do not do so through an organized program of any sort. In addition there are a number of legal aid societies employing staff attorneys who receive no funds from LSC, a few of which have over $1 million in funding. And, of course, there are a number of attorneys whose practice includes the representation of low income people at a reduced rate. We do not have complete and reliable information on the number of attorneys or attorney hours so devoted to legal services for the indigent, but they would increase the number of attorneys per 10,000 rather considerably.

REGGIE PROGRAM

AS WE DISCUSSED PREVIOUSLY WITH MR. OPSUT, I AM CONCERNED THAT THE REGINALD HEBER SMITH FELLOWSHIP PROGRAM WAS NOT BUDGETED FOR FUNDING IN LSC'S 1986 BUDGET REQUEST. I HAVE SOME FURTHER QUESTIONS REGARDING THE BOARD'S TREATMENT OF THE REGGIE PROGRAM.

QUESTION: DO YOU VIEW IT AS A LEGITIMATE GOAL FOR LEGAL SERVICES TO TRY TO RECRUIT A COMPETENT WORK FORCE THAT REFLECTS AND RESPONDS TO THE DELIVERY OF THE CLIENTS TO BE SERVED, MANY OF WHOM ARE WOMEN, BLACKS, HISPANICS AND OTHER MINORITIES?.

ANSWER: Yes.

The primary goal of the Legal Services Corporation (LSC) is to provide legal services to persons unable to afford such assistance. The Legal Services Act mandates that LSC expend funds so as to provide "the most effective and economical delivery of legal assistance" to such persons.

The best manner in which to meet this goal is obviously to retain the most qualified attorneys, managers, and staff. I use the term "qualified" in the broadest sense, including dedication and an ability to relate to LSC-eligible clients. I firmly believe that the nationwide population of attorneys is replete with such individuals. Each of our local grantees strives to retain such individuals. Additionally, LSC's many research projects attempt to obtain the services of such attorneys and staff.

It should be noted that in 1983-84, the Reginald Heber Smith Community Lawyer Fellowship Program expended over $4.7 million in LSC funds. This money was used to procure 203 full time Reggie Fellow slots. These statistics show that the Reggie program is not a cost-effective method of attracting minority attorneys to a program. The total number of Reggie Fellows represented just 17% of the 1192 minority attorneys being paid with LSC funds. Since these statistics raise some questions, and the Reggie program's import to attracting minority attorneys is not substantial, the program's efficiency is being reviewed.

QUESTION: RECOGNIZING THAT THE NUMBER OF MINORITY LAWYERS IS FAR BELOW THE PROPORTIONATE REPRESENTATION OF MINORITIES IN SOCIETY IN GENERAL, DO YOU FEEL THAT SITUATIONS MAY ARISE WHERE IN ORDER TO ATTRACT MINORITY LAWYERS TO A PROGRAM, THEY MAY HAVE TO BE SPECIFICALLY RECRUITED?

ANSWER: The percentage of attorneys employed by the Legal Services Corporation is not disproportionate to the percentage of minorities in the general population. LSC's 1984 Fact Book and 1980 U.S. Census give the following statistics:

	LSC Attorneys	U.S. Population
White	73.7%	81.1%
Black	13.1%	11.5%
Hispanic	10.4%	6.3%
Asian	1.3%	1.5%
Native American	1.2%	0.6%
Male	57.3%	47.9%
Female	42.6%	52.1%

As can be seen from the above data, the number of minority attorneys employed by LSC monies is not "far below the proportionate representation of minorities in society in general." In fact, the exact opposite is true. Nevertheless, recruitment of minority attorneys continues at LSC on both the national and local level.

QUESTION: DO YOU THINK A PROGRAM -- SUCH AS REGGIE -- THAT SPECIFICALLY SEEKS AS PART OF ITS GOAL TO RECRUIT WOMEN AND MINORITIES MAY HAVE LEGITIMATE VALUE IN A PROGRAM OF THIS KIND?

ANSWER: The Reggie program undoubtedly had legitimate value in recruiting minority and women attorneys at one time. However, the Reggie Program is no longer cost-effective. Funds saved from the Reggie program can be devoted to other needs, including more cost-effective minority recruitment through a variety of approaches, including an in-house Legal Services Corporation National Job Bank and direct assistance to local programs for recruitment. These more cost-effective recruitment activities will replace the 17% contribution of the Reggie program to minority recruitment and help to assure the continuation of the strong record of recruitment of minorities and women into LSC programs.

VIEWS ON POVERTY IN THE U.S.

MR. DURANT, IN YOUR TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE, YOU CITED "RESEARCH" WHICH SHOWS THAT MANY OF THE WAR ON POVERTY PROGRAMS WERE FAILURES AND, INDEED, HAD THE COUNTERPRODUCTIVE EFFECT OF BREAKING UP FAMILIES AND EVEN PUSHING PEOPLE INTO POVERTY. SINCE LSC IS A CHILD OF OEO, YOU SAID THAT YOUR BOARD MUST BE COGNIZANT OF THIS PROBLEM AND ALWAYS BE CERTAIN THAT THE WORK DONE BY LEGAL SERVICES PROGRAMS IS IN THE BEST INTEREST OF POOR PEOPLE GENERALLY.

THE "RESEARCH" YOU CITED WERE WORKS BY CHARLES MURRAY AND GEORGE GILDER. AS YOU KNOW, THE WRITINGS OF THESE TWO MEN ARE VERY CONTROVERSIAL BOTH IN METHODOLOGY AND IN THE CONCLUSIONS THEY DRAW. YOU SEEM TO BE ENDORSING THOSE CONCLUSIONS, HOWEVER, WHICH RAISES SOME ISSUES FOR ONE.

ALSO, IN MANY OF YOUR PUBLIC STATEMENTS YOU HAVE RAISED THE CONCEPT OF THE VALUE OF THE FREE MARKET APPROACH TO LEGAL SERVICES AND THE POTENTIAL BENEFICIAL EFFECTS OF COMPETITION. SOME COULD CONCLUDE THAT YOU ARE HEADED TOWARD A SORT OF "SOCIAL DARWINISM" IN LEGAL SERVICES, THAT IS SURVIVAL OF THE FITTEST. THE NOTIONS OF LOCAL PROGRAMS COMPETING WITH OTHERS FOR CLIENTS OR GRANTS; OF BACK-UP CENTERS SELLING THEIR SERVICES TO LOCAL PROGRAMS; OF REMOVING DUE PROCESS PROTECTIONS FROM LOCAL PROGRAMS SO THAT LSC COULD DEFUND A GRANT MORE EASILY; OF THE THREAT OF DEFUNDING BEING AN "INCENTIVE" TO HIGH QUALITY SERVICES; AND SO ON. ALL OF THESE NOTIONS, HOWEVER VALID THEY MAY BE, MAKE YOU SOUND LIKE A BELIEVER IN SOME OF THE THEORIES WE HAVE HEARD ABOUT IN THE RECENT DEPARTMENT OF EDUCATION HEARINGS. INDEED, I WONDER IF YOUR CONCEPTS INCORPORATE A NOTION THAT GOVERNMENT AND SOCIETY HAVE NO OBLIGATION TO HELP THOSE IN NEED OR THOSE WHO ARE WEAKER.

QUESTION: In citing Mr. Murray and Mr. Gilder as authority, you seem to be endorsing their ideas and conclusions. Mr. Murray argues that welfare benefits are too high and serve as a disincentive for recipients to lift themselves out of poverty. He also objects to the work of LSC lawyers because they represented clients in successful suits which required state welfare officials (among them then-Governor Reagan) to follow federal law in disbursing welfare funds. Do you agree with Mr. Murray in these two points?

ANSWER: The essence of this question seems to ask my opinion on class action suits. As I have stated previously during confirmation hearings, a class action suit may be an appropriate remedy when it is carried out in accordance with Congressional restrictions enacted into law and when it is the best course to resolve the problem of the individual client who has approached an attorney for help.

After a quick review of Mr. Murray's book Losing Ground, I do not see where he states objections to the work of LSC funded lawyers regarding suits against state welfare officials. In regards to his discussion of a variety of disincentives created by welfare programs, I think there is evidence that negative effects on the dignity of individuals has not been fully taken into account when reviewing welfare programs.

Recently in a speech at Hofstra University, Senator Kennedy made a statement which I agree with and think is relevant to this discussion. He said, "Who can deny that some traditional programs have fallen short, and that others, precisely because they have succeeded, can be thankfully set aside? The mere existence of a program is no excuse for its perpetuation, whether it is a welfare plan or a weapons system. The unexamined program is not worth keeping, and good intentions cannot redeem bad results."

QUESTION: You said in your prior testimony that a legal services program must consider the best interests of poor people generally as it represents its clients. If you were a legal services lawyer and you had evidence that an opposing party was violating the law and thereby injuring your client, would it be ethical for you to to disregard the interests of your client because of some greater societal good?

ANSWER: Legal Services attorneys, as with all members of the bar, have a responsibility to represent their clients to the best of their ability. When an eligible client is injured by a person violating the law and seeks legal assistance, the attorney should provide legal advice or direct the client to a willing attorney possessing greater expertise.

QUESTION: Do you believe that legal services lawyers should be allowed and expected to represent their clients in a high quality and ethical manner?

ANSWER: Legal Service attorneys should represent their clients according to the same quality and ethical standards that all attorneys apply in their representation of their clients. Additionally, LSC funded attorneys must see that they comply with all the requirements and restrictions in the LSC Act, Appropriation's riders, and LSC regulations.

QUESTION: When you argue for more competition in the marketplace of legal services, are you suggesting an approach that means survival of the fittest?

ANSWER: Competition in the marketplace does not imply "survival of the fittest." What it does imply is insuring that LSC eligible clients receive ever increasing access to justice as a result of maximizing our limited resources.

QUESTION: Is cost your only concern, or are other factors important to you in judging the "value" of the services provided? What are those factors?

ANSWER: Cost is obviously just one factor that would be used to evaluate a legal service program. The number and type of cases being resolved, the quality of the work performed (as measured by the local bars, courts, and clients themselves) are among other factors that would need to be weighed.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

QUESTION: What information have you received from legal services grantees, their organizations, or other interested groups about the legal needs of the poor in this country and about the level of funding which would be needed to meet those needs?

ANSWER: The Corporation is interested in hearing recommendations on how best to measure the legal needs of the poor from grantees, bar leaders and others. The Project Advisory Group, an organization seeking to maximize federal funding for grantees, has suggested an appropriations of $373 million for FY '86.

In the past, some in Legal Services set as their goal two attorneys per ten thousand poor people. However, there is a great disparity in the funding levels among grantees and widely differing approaches to delivering legal services with each program setting its own priorities and organization structure.

There is not now available a good nationwide data base on this issue. The Corporation is planning a study of the legal needs of the poor, the experiences of the grantees, private legal aid societies and private practioners will provide valuable insights as we conduct the study.

QUESTION: What system do you have for collecting data on cases and clients from the field programs? How frequently is this data collected? What client confidentiality provisions are built into the data collection procedures?

ANSWER: LSC collects data on cases and clients from the field programs through a quarterly statistical reporting system called the Case Service Reports (CSR) system. The current CSR reporting form is attached. The CSR form provides for separate reporting on cases and clients, making it impossible to link the two. Field programs have the option of collecting client information either at intake or at case closing. Case information is reported for closed cases only.

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LEGAL SERVICES CORPORATION
STATISTICAL CASE SERVICE REPORT

PROGRAM NAME

BRANCH/UNIT

PERSON(S) PREPARING REPORT

GRANTEE NUMBER

REPORT FOR PERIOD ENDING

CLIENT AGE AND ETHNICITY	UNDER 18	18-59	60 and OVER	TOTAL GROUP CLIENTS	TOTAL
WHITE - Not of Hispanic Origin	1	2	3	↓	
BLACK - Not of Hispanic Origin	4	5	6		
HISPANIC	7	8	9		
NATIVE AMERICAN	10	11	12		
ASIAN or PACIFIC ISLANDER	13	14	15		
TOTAL	+	+	+	16 +	=

LEGAL PROBLEM	CODE	MAJOR REASON CASE CLOSED											TOTAL
		a. COUNSEL and ADVICE	b. BRIEF SERVICE (OTHER THAN COUNSEL and ADVICE)	c. REFERRED AFTER LEGAL ASSESSMENT	d. INSUFFICIENT MERIT TO PROCEED	e. CLIENT WITHDREW OR DID NOT RETURN	f. NEGOTIATED SETTLEMENT WITHOUT LITIGATION	g. NEGOTIATED SETTLEMENT WITH LITIGATION	h. ADMIN. AGENCY DECISION	i. COURT DECISION	j. CHANGE IN ELIGIBILITY STATUS	k. OTHER	
CONSUMER/FINANCE													
Bankruptcy/Debtor Relief	01												
Collection (Incl. Repossession/ Deficiency/Garnishment)	02												
Contracts/Warranties	03												
Credit Access	04												
Energy (Other than Public Utilities)	05												
Loans/Installment Purchase (Other than Collection)	06												
Public Utilities	07												
Unfair Sales Practice	08												
Other Consumer/Finance	09												
TOTAL CONSUMER/FINANCE													
EDUCATION													
Education	11												
EMPLOYMENT													
Job Discrimination	21												
Wage Claims	22												
Other Employment (Including CETA)	29												
TOTAL EMPLOYMENT													
FAMILY													
Adoption	30												
Custody/Visitation	31												
Divorce/Separation/Annulment	32												
Guardianship/Conservatorship	33												
Name Change	34												
Parental Rights Termination	35												
Paternity	36												
Spouse Abuse	37												
Support	38												
Other Family	39												
TOTAL FAMILY													
TOTAL CASES PAGE 1													
TOTAL CASES PAGE 2													
TOTAL CASES			+	+	+	+	+	+	+	+	+	+	=

LSC-14-10

CSR-1 (1/80)

UPY AVAILABLE

STATISTICAL CSR (Continued)

PAGE 2

LEGAL PROBLEM	CODE	MAJOR REASON CASE CLOSED											TOTAL
		a. COUNSEL AND ADVICE	b. BRIEF SERVICE (other than counsel and advice)	c. REFERRED AFTER LEGAL ASSESSMENT	d. INSUFFICIENT MERIT TO PROCEED	e. CLIENT WITHDREW OR DID NOT RETURN	f. NEGOTIATED SETTLEMENT WITHOUT LITIGATION	g. NEGOTIATED SETTLEMENT WITH LITIGATION	h. ADMIN. AGENCY DECISION	i. COURT DECISION	j. CHANGE IN ELIGIBILITY STATUS	k. OTHER	
JUVENILE													
Delinquent	41												
Neglected/Abused/Dependent	42												
Other Juvenile	49												
TOTAL JUVENILE													
HEALTH													
Medicaid	51												
Medicare	52												
Other Health	59												
TOTAL HEALTH													
HOUSING													
Federally Subsidized Housing Rights	61												
Homeownership/Real Property	62												
Landlord/Tenant (Other than Public Housing)	63												
Other Public Housing	64												
Other Housing	69												
TOTAL HOUSING													
INCOME MAINTENANCE													
AFDC/Other Welfare	71												
Black Lung	72												
Food Stamps/Commodities	73												
Social Security	74												
SSI	75												
Unemployment Compensation	76												
Veterans Benefits	77												
Workers Compensation	78												
Other Income Maintenance	79												
TOTAL INCOME MAINTENANCE													
INDIVIDUAL RIGHTS													
Immigration/Naturalization	81												
Mental Health	82												
Prisoner's Rights	83												
Physically Disabled Rights	84												
Other Individual Rights	89												
TOTAL INDIVIDUAL RIGHTS													
MISCELLANEOUS													
Incorporation/Dissolution	91												
Indian/Tribal Law	92												
License (Auto & Others)	93												
Torts	94												
Wills/Estates	95												
Other Miscellaneous	99												
TOTAL MISCELLANEOUS													
TOTAL CASES PAGE 2													

QUESTION: You are proposing some large cuts in certain programs. For example, the cut in the migrant programs and components is over 21%. The Regionald Heber Smith Fellowships are to be eliminated. National Support is to be cut 10%. Special elderly programs will be cut 50%. After making these major reductions, you are proposing a relatively small increase of 4.6% in Basic Field Programs.

ANSWER: The Board studied every facet of this budget quite extensively before submitting their request to Congress in March. Three hearings were held, dozens of speakers heard and thousands of pages read. Based upon its study, the Board determined that some shifts in priorities were necessary.

Direct service to clients has always been the foundation of Congressional and public support for this program. In a time of scarce resources, it is imperative that we maximize the funds going to direct representation of the poor. The Board's priority in preparing this budget was to ensure that direct service to clients be increased. Therefore, the Board increased funding for basic field programs by 4.5 percent or $11,300,000.

Other areas of the budget had to be cut to allow this increase in direct service to clients in FY '86. However, this shift in priorities will give more money and more discretion to the basic field programs on how to best serve their clients.

QUESTION: How many migrants are being served in 1985? How many migrants do you estimate will be served under the reduced funding allocation which you are proposing?

ANSWER: In FY '84, LSC migrant programs served 13,072 clients; figures are not yet available for FY '85. The impact in service to migrants in 1986 will depend upon the decisions made by our basic field programs.

Although migrant funding is being reduced by $2,000,000, basic field funding is being increased $11,300,000. In 41 of 43 instances, migrant units are a component of a basic field program. Because basic field is being increased, these programs will have more monies available to serve all their clients, including migrants. In fact, the migrant programs which currently receive the least funding will be impacted less severely than the large, well-funded programs because the increase in basic field funding to the low-funded migrant programs will greatly exceed the cuts in migrant funding. Local programs' boards of directors will have the authority to decide how to best allocate those funds to serve the most pressing needs of their local communities. If those local boards determine that migrants in their service area need more service, they will be able to shift the monies to provide that service. If the needs of the elderly are more important in that community, the local board can fund those activities.

The shift of funding into basic field grants strengthens the local control of legal services by allowing local programs more discretion in allocating their scarce resources into the areas of greatest local need.

QUESTION: What will be the effect of the elimination of the "Reggie" program on the total number of staff attorneys in field programs? On the number of minority attorneys in the program?

ANSWER: The elimination of the "Reggie" program will have little effect on the total number of staff attorneys in field programs. At the end of 1983, field programs employed 4,766 staff attorneys, while the entire $5,232,328 Reggie budget provided the field with only 200 Reggie attorneys.

Elimination of the Reggie program will similiarily have little effect on the number of minority attorneys in the field. The Corporation conducted a survey of field programs which revealed that less than 10% of the black, hispanic and other minority attorneys practicing in field programs are former Reggies. Field programs have been much more successful in recruiting minorities on their own than the national Reggie program.

The Reggie program was initiated in the sixties, and carried into the seventies and eighties, as a means of recruiting minority lawyers nationwide and to encourage law students to take up poverty law. However, the past twenty years have brought tremendous growth in the numbers of qualified minority students graduating from law schools each year, legal clinics serving the poor are now part of most law school programs and strong ties have been built between our programs and law schools across the country. In addition, available positions are advertised nationwide through the LSC-funded Clearinghouse Review. It no longer makes sense to spend $5.2 million to recruit and place new lawyers for our programs. The Board plans to grant this money directly to the field programs to hire their own attorneys. We will assist the field programs with an in-house job bank and minority recruiting assistance and will further study the best way to recruit minorities.

QUESTION: What support services will be reduced or eliminated as a result of the cut in National Support funding being proposed?

ANSWER: Funding for National support was reduced by 10% in the Corporation's FY '86 Budget request. Those funds were transferred to basic field programs to increase direct services to clients.

Currently under discussion is a proposal which would explore the application of the market system to the provision of support to our field programs. Under the existing system, national support centers receive grants from the Corporation to provide support to the field programs. The national support centers then set national priorities on the kinds of support they will offer. If a field program has a support need which falls outside of the national center's priorities they are denied that service.

Under the proposal, field programs would be directly given a portion of the support funds and the freedom to choose the most effective and efficient means of providing support to their attorneys. Local programs, based upon their unique needs, could purchase support services from the current centers. Or they could purchase support services from other providers. Thus the Corporation would be attempting to provide an alternative support delivery system which would, as its most important outcome, be more responsive to the needs of local programs in their delivery of legal assistance to eligible clients. It would also assure that the support centers would be funded (through the fees paid to them by local programs) for the necessary services they provide.

The Corporation will keep Congress informed of the progress of this proposal. Any such proposal will be thoroughly discussed and studied prior to implementation. The Corporation does believe that such a system could increase the provision of necessary support services to our field programs.

QUESTION: What projects will be cut back as a result of the proposed halfing of the funds for the Special Elderly Program?

ANSWER: The FY '86 budget request will increase the scope and effect of the Special Elderly Program. In FY 1985, Congress earmarked $2 million of LSC's appropriation for a *two-year* project to expand legal services to the elderly through development of three areas: clinical education, *pro bono* activities and teaching and resource materials. These projects are now being developed by our staff in conjunction with experts in the provision of legal services to the elderly. The grants will be made in June 1985 and will continue through FY '86 with the funds already appropriated. LSC seeks an additional $1 million dollars to study and provide service to the institutionalized elderly in FY '86.

QUESTION: How many staff positions will be added and how many additional clients will be served on the basis of the 4.6% increase being proposed for the Field Programs?

ANSWER: Under the LSC Act, local staffing decisions are made independently by the board of directors for each local program. Thus, the Corporation does not know just how many staff positions will be added by local programs with this increase. Similiarly, LSC does not know how many additional clients will be served as that is a function of the priorities selected by local programs.

QUESTION: What are your views on relative levels of funding in the future for the various field, supplemental service, and support programs? Are you considering any further shifts in funding levels among the different types of programs?

ANSWER: The priority of the Board of Directors is direct service to eligible clients. Shifts in the relative priorities in the budget will be considered in the light of providing the most service to clients possible with the available funds.

QUESTION: I understand that Chairman Durant and others have expressed an interest in annual competitive bidding for grants. Is such a new procedure being considered? If so, would you describe how the procedure would most likely work? What criteria would be used to make decisions on grant awards?

ANSWER: The principal way in which competitive bidding will improve legal services is through the incentive it will give current providers to improve existing programs. Our current programs are of uneven quality. The 1984 LSC Fact Book reported that there were 21 programs that closed less than 25 caes per $10,000 of LSC funding in 1983, while the vast majority of programs closed more than 50 for that sum. Without examining them one by one I am not prepared to say that those programs are not well run, but I believe that statistic does indicate that there is room for improvement in the efficiency of some grantees. I can think of nothing that would give the Board of Directors and staffs of those programs the incentive to improve their efficiency, their responsiveness to clients, and their recruitment of volunteers from the private bar, than the prospect that another organization may be able to successfully compete for the right to serve that community.

Competition could also strengthen legal services delivery by allowing the LSC to choose new, more efficient providers in some communities. In some cases, the configuration of current programs may not be efficient. Congressman George O'Brien has said that the Will County Legal Aid Society would, in his opinion, be able to offer better service if LSC were to fund it directly rather than through Prairie States Legal Services, Inc. The late Congressman Gillis Long asked LSC to consider direct funding of Allen Legal Services in Allen Parish, where local people had offered to match LSC funds to keep an office open in their community that the current LSC grantee had closed. That was in a community with 24% unemployment that is now 60 miles from the nearest LSC funded office. I don't know whether we should fund these groups separately, but I firmly believe it is wrong for the law to make it virtually impossible for us to do so. I really do not believe that is Congress' intent and I trust that the authorization and appropriations bills adopted this year will enhance our flexibility to respond to such proposals.

I believe that a more competitive refunding process would make our current grantees more careful to observe the letter and spirit of the law. I don't believe the National Client's Council would have let their director use LSC funds to make himself an interest free loan if they thought the LSC had a practical mechanism for not renewing their grant--as it is, the NCC has held on to its grant for 1 1/2 years now since this abuse was discovered and the administrative process continues.

Competition works throughout our economy. Legal Services for middle class people are now available more widely and inexpensively because the courts have stricken down the barriers to advertising to permit lawyers to compete for client business. I don't know of any other federal program in which a recipient of a grant has a perpetual right to renewal of that grant, without competition from others, unless he's caught twice in violation of law. I have no reason to believe that competition for LSC basic field grants will do anything except result in providers of service who make a better effort to satisfy their clients.

In closing, Senator, let me assure you that improving service to clients would be the objective of any change in the grant-making process that would have my support. I would also be most insistent that adequate measures would be required to insure the orderly completion of cases already undertaken by any current LSC grantee whose funding was not continued.

QUESTION: What is the status of the search for a new president for the corporation? What qualifications are you seeking in candidates for this position?

ANSWER: The search for the new President began in January. The Board established a special Committee to conduct a nationwide search for the most qualified individuals. The Committee has been very careful and deliberate soliciting recommendations regarding the qualifications of the new President and actual names of candidates from all field programs, state governors, and Bar leaders. We have advertised in national publications and have held six meetings where the Committee received public input into the process and reviewed applications. Over two hundred applications have been received. We are narrowing the list of candidates under active consideration and hope to have a new President by June or July. The Presidential Search Committee's most recent meeting was May 22, 1985.

Attached is a list of qualifications and factors that the Committee is considering when reviewing the applications.

RESOLVED, that in addition to the requirement that the President of the Legal Services Corporation be a member of the bar of the highest court of a State, as set forth in Section 1005(a) of the Legal Services Corporation Act of 1974 (Pub. L. 93-355), the Board of Directors of the Corporation hereby establishes as factors and qualifications to be considered in the selection of a President of the Legal Services Corporation, the following:

1. Good character.
2. Good reputation

  - (a) Public;
  - (b) Bar;
  - (c) Client community;
  - (d) Project groups;
  - (e) Congress.

3. Commitment to quality legal services for the poor.

4. Good Administrator
   - (a) Ability to organize;
   - (b) Leadership (ability to attract good subordinates);
   - (c) Ability to work with Board;
   - (d) Ability to delegate;
   - (e) Ability to deal with special problems of legal services programs:
     - (1) High staff turnover;
     - (2) Recruitment of minorities;
     - (3) Hostility from various areas;
     - (4) Inexperienced attorneys;
     - (5) High case load;
     - (6) Low salaries;
     - (7) Confrontation.
   - (f) Innovative;
   - (g) Good judgment;
   - (h) Diligence;
   - (i) Public presence;
   - (j) Ability to speak;
   - (k) Ability to write;
   - (l) Generally intelligent.
5. National visibility.
6. Experience
   - (a) Legal Services
   - (b) Practice
     - (1) Government
     - (2) Civic
     - (3) Politics
     - (4) Miscellaneous
7. Recommendations.

QUESTION: I understand that the Corporation has undertaken a study of Legal Services Support Services, conducted by the National Opinion Research Center (NORC). My information is that the NORC study pointed to the need for support centers--both national and state-and general satisfaction of field programs with the work currently performed by these centers.

Will you submit the findings of the NORC study for the record.

ANSWER: The NORC study is attached at the conclusion of these questions and answers.

QUESTION: I believe that the staff is recommending another study of support centers with a portion of the 1984 carryover funds. What new do you expect to find out from another study?

ANSWER: The Corporation wishes to learn whether modifications to the existing support system would increase the quality, availability and selection of support services for our field programs.

QUESTION: How much would a new study cost and who would do it?

ANSWER: That has not yet been determined.

QUESTION: Will there be an opportunity for meaningful input from the affected support centers?

ANSWER: Yes.

SUBCOMMITTEE RECESS

Senator RUDMAN. Thank you for coming back for the second hearing.

Mr. DURANT. Thank you.

Senator RUDMAN. Good luck.

Mr. DURANT. Thank you for your help.

Senator RUDMAN. The subcommittee is in recess.

[Whereupon, at 10:50 a.m., Tuesday, May 8, the subcommittee was recessed, to reconvene at the call of the Chair.]

U.S. COMMISSION ON CIVIL RIGHTS

[CLERK'S NOTE: The following material is submitted for the record on behalf of the fiscal year 1986 budget request of the U.S. Commission on Civil Rights.]

PREPARED STATEMENT OF HON. CLARENCE M. PENDLETON, JR.
CHAIRMAN
U. S. COMMISSION ON CIVIL RIGHTS

I am pleased to submit this testimony in support of the President's request for $12,061,000 and 236 full-time equivalent positions for Fiscal Year 1986. Including the amount requested in the pay cost supplemental, we anticipate that the appropriation for Fiscal Year 1985 will be $12,869,000. The 1986 request, therefore, represents a decrease of $808,000. After making adjustments for mandatory decreases in Federal pay, GSA standard level user charges, and administrative costs, the Fiscal Year 1986 request represents a program reduction of $157,000.

The Commission was re-established for a six-year term by the U.S. Commission on Civil Rights Act of 1983 (P.L. 98-183). The responsibilities of the Commission remain the same as those of the former Commission established by P.L. 85-315, as amended. Of the eight Commissioners, four appointed by the President, and two each by the Speaker of the House and the President Pro Tempore of the Senate, five had not served previously on the Commission.

Program plans for the current year include the completion of the reports on Violence and Bigotry Against Asian and Pacific Island Americans; Employment of Americans of Eastern and Southern European Ancestry, a study mandated by Congress; and Voluntary and Involuntary Methods of Achieving School Desegregation. The school desegregation study is one of the most comprehensive of its kind done by a government agency or a private organization. The study will address such questions as: 1) How do magnet schools affect desegregation? 2) How much long-term desegregation results from mandatory plans? 3) What are the effects of voluntary plans? 4) How much of the recent enrollment loss in some districts is due to school desegregation and how much is due to population trends?

The Agency will also publish a report based on the Commission's comparable worth consultation held in June 1984. The consultation was perhaps the most balanced presentation of differing views on a controversial subject that the Commission has ever undertaken. The Agency also plans to hold a hearing on the protection of handicapped newborn infants and is in the midst of a consultation/hearing on affirmative action topics.

Our Federal evaluation program will release a paper which provides analysis of key issues in the proposed and/or anticipated fair housing legislation. Work will continue on the Federal equal employment enforcement report, a study that will assess the Federal effort in terms of budget, resources and policy. Additionally, the Agency's field operations will continue activities in support of the State Advisory Committees which review, report, and recommend solutions to civil rights problems at the state and local level.

The Commission's proposed FY 1986 program is an ambitious one based on a small budget.

The first of our objectives is to complete substantially the projects that are currently underway. Secondly, we will continue to monitor Federal civil rights enforcement programs. The Agency's field operations will continue activities to enhance the State Advisory Committees. Our liaison program with civil rights, education, labor, business, and religious groups will be continued as will our Clearinghouse Library, which serves as a national repository for books, periodicals, and other publications pertaining to civil rights. Finally, the Agency will initiate five new projects including two hearings and a consultation.

During Fiscal Year 1986, research already initiated under Activity I will be continued. Included are Incomes of Americans: Racial, Ethnic, and Sex Differences; Affirmative Action in Higher Education; Redistricting and Minorities; State and Local Civil Rights Enforcement; and the preparation of a National Directory of Private Fair Housing Agencies. Additionally, two new projects will be undertaken. The first project concerns the Isolation of Hispanic Students. This project will result in the preparation of a report which analyzes existing literature regarding the trends and likely causes of Hispanic student isolation. The second project, a study of student discipline, will examine whether racial or ethnic discrimination occurs in the application of discipline in the public schools.

Under Activity II (Hearings, Legal Analysis and Legal Services), the Commission will publish reports and transcripts from the hearings held on handicapped newborns and on housing discrimination. During FY 1986, the Commission will conduct two hearings and a consultation. Following the hearing on housing discrimination, the Commission will choose an emerging civil rights issue as the topic for its second hearing. Among the possible subjects for the second hearing and the consultation are "Voting Rights," "Indian Rights," and "Accommodating Handicapped Persons: Access to Public Transportation."

I believe that the work of the Commission remains important to the well being of the Nation. I know that my colleagues on the Commission join me in that belief.

I thank the Chairman and Members of the Committee for the opportunity to provide testimony and responses to Committee questions regarding the appropriations report for the U.S. Commission on Civil Rights. As always, we are available at your convenience to supply any further information which may be required.

SUBMITTED QUESTIONS

1. Last year, at the insistence of the House, the Appropriation for the U.S. Commission on Civil Rights contained a number of statutory earmarks.

Question

(A) What has been the impact of this action?

Answer

The U.S. Commission on Civil Rights is a labor intensive agency. Funding for the Agency primarily consists of employee compensation and fixed expenses. Together these expenses represent approximately 93 percent of our total appropriation request for FY 1986. The remaining 7 percent supports travel, printing, supplies, and other requirements that are directly related to the actual performance and scope of our programs' assignments.

The earmarks, which have the effect of establishing a separate appropriation for each of our seven activities adversely impact the agency's overall mission as well as our Congressional mandate. Specifically, they have the effect of freezing Agency plans made nearly one and a half years earlier into program requirements unless a supplemental request to modify the earmarks is approved by the Congress.

The Commission's ability to change its program emphasis in response to new developments is, therefore, needlessly diminished. Further, earmarking may require us to lapse funds in all activities to avoid violation of the Anti-Deficiency Act, making us less able to meet our responsibilities across the board. This in effect reduces the amount available for completing program plans. Additionally, decisions from the Congress and OMB which result in reducing the Agency's funding have a greater potential for hindering program plans. These reductions must be absorbed commensurately to avoid overspending within the earmarks or absorbed in a single activity which could result in its elimination.

Question

(B) Have the earmarks hurt the effectiveness of the Commission?

Answer

Yes. Currently, there is a need to modify the initial earmarks imposed by the Congress so that an additional project can be undertaken under the Agency's Hearings, Legal Analysis, and Legal Services Activity. This modification requires Congressional approval of a supplemental request before obligations pursuant to that project can be incurred, although funds are available in the Agency's budget.

Question

(C) Have the earmarks threatened the Agency's independence?

Answer

Yes. Specifically, both internal and external decisions which affect the Agency's resources must first be conformed to the earmarks before being carried out. Such decisions include reorganizations, personnel reassignments, hiring, contracting, and purchasing. Further, program requirements for additional funding above the amount earmarked must be requested via supplemental, even if available funds exist within other activities of the Agency. This not only frustrates the decision-making process and promotes delays in program services, but also usurps managerial prerogatives inherent to every Federal agency.

Question

(D) Would negative results grow worse if earmarking recurred?

Answer

The potential for conditions to grow worse during the remainder of FY 1985 does exist. Following is the identified impact of the earmarking with regard to an increase in funds lapsed at year end:

(1) the inability to reprogram Agency funding in a timely manner with changes in program plans;

(2) the frustrations caused within the decision-making process usurping managerial prerogatives; and

(3) the inconsistencies associated with program planning and implementation.

All of these conditions will continue to persist during FY 1986. However, the Agency anticipates an even greater challenge if earmarking continues to be imposed. During FY 1986, the Agency will absorb pay costs for the first quarter of the year. GSA rent charges will be increased, and there exists the possibility of absorbing the five percent Federal pay reduction, if the Administration's proposal is not accepted.

In the absence of the earmarks, the Agency would pool all available resources after a reprioritization and reprogramming of Agency plans to assure that productivity is maximized and that the Agency remains solvent. It is essential to note that the earmarks, because of their restrictive qualities preclude this plan of action.

In the event that the earmarks are maintained in FY 1986, many of the Agency's program plans would be needlessly delayed, if not eliminated. The scope of our field investigations, reports, studies, and hearings would be reduced to the immediate location of our Regional Offices and Headquarters. Program operations may be held stagnant as funding for travel, printing, supplies, and other requirements directly related to carrying out program assignments would be severely reduced. Finally, reductions-in-force or furloughing may be required to avoid violating the Anti-Deficiency Act.

2. According to P.L. 98-183, your latest reauthorization act, you are to investigate allegations of any denial of the right to vote in a Federal election as a result of fraud or discrimination.

Question

(A) Are you conducting any investigations of the 1984 elections?

Answer

No. The Commission is not investigating the 1984 elections. The language of P.L. 98-183, codified at 42 U.S.C. 1975c, and carried over from the Civil Rights Act of 1957, as amended, authorizes the Commission to "investigate allegations made in writing and under oath or affirmation" of patterns or practices of denial of voting rights because of fraud or discrimination. The Commission has not received any such written and sworn allegations with respect to any aspect of the 1984 election. In the absence of a general investigative authority, the Commission forwards individual complaints alleging discrimination in the electoral process to the Civil Rights Division of the U.S. Department of Justice, the Federal agency with enforcement authority in this area.

Question

(B) In general, in your opinion, are incidents of denials of the right to vote becoming more or less frequent?

Answer

On the basis of Commission research reported in The Voting Rights Act: Unfulfilled Goals (1982) and The Voting Rights Act: Ten Years After (1975), it appears that overt incidents of discrimination affecting individuals (such as refusal to register a voter) have decreased, though such incidents still occur at every stage of the electoral process. More subtle forms of discrimination have emerged, however, that tend to affect large numbers of citizens, such as dilution of minority votes through manipulation of district lines, annexations, electoral systems and the like. These issues are the focus of Justice Department enforcement and litigation as well as private litigation.

Later in FY '85, the Commission will undertake an analysis of the effect of post-1980 Census State and local redistricting on the opportunity of minorities to participate effectively in the political process (see page 31 of the budget justification).

3. Your justification indicates that you received 19 Freedom of Information and Privacy Act requests in FY 1984. For Fiscal Years 1985 and 1986, you estimate you will receive 85 requests.

Question

(A) What is the reason you project such a large increase?

Answer

The number given for FOIA and P.A. requests for FY '84 (19), is erroneous. The total number of requests received in FY '84 was thirty (30).

The anticipated increase in the number of requests (85) for FY's 85 and 86 is attributable to the heightened public awareness of the Commission resulting from its activities and the frequent public appearances and statements of members of the Commission and the Staff Director.

In FY '85, to date, fifty-five (55) FOIA and P.A. requests have been received.

4. Congress mandated that you undertake the study Employment of Americans of Eastern and Southern European Ancestry. According to your justification, a contract study was prepared on this subject but was judged "not to be responsive to Congress' mandate." The Commission is doing its own study on the same subject.

Question

(A) Why was the first study declared nonresponsive?

Answer

In 42 U.S.C. 1975c, the U.S. Commission on Civil

Rights is required to study denials of equal protection involving Americans of eastern and southern European ancestry and to analyze the adverse consequences of affirmative action for these groups. The Commission contracted for the preparation of a report dealing with these issues. The report submitted by the contractor contained a review of the historical literature on the socio-economic condition of these groups, a chapter presenting primarily descriptive statistics on the current employment status of eastern and southern European ethnics, and a review of Federal and State laws and policies regarding national origin discrimination. Information and data analysis contained in the report were not adequate for determining whether these groups are discriminated against or adversely affected by affirmative action.

Question

(B) Did you recover any money from a contractor that delivered an unacceptable product?

Answer

No money was recovered from the contractor. Recovery of money would have required the Department of Justice to institute legal proceedings. We determined that it is extremely unlikely that the Government would have prevailed in such proceedings since the contractor did, in fact, perform work and deliver a product under the terms of the contract. The failure of the product to meet Commission staff expectations for a social science research monograph does not obviate the Agency's obligation to compensate the contractor. We believe that pursuit of this issue would not be cost beneficial to the Government.

Question

(C) Who was the contractor?

Answer

The contractor for the study was the National Center for Urban Ethnic Affairs located at 20 F Street, N.W., Fifth Floor, Washington, D.C. 20033.

Question

(D) How much did the Commission pay for the first study?

Answer

The Commission paid $25,524.15.

Question

(E) Is the Commission using any of the information generated by the private contractor?

Answer

The contract study consisted of a review of literature detailing both the historical and current status of southern and eastern European ethnic groups. The Commission is conducting an independent analysis of the 1970 and 1980 census data, and is, therefore, not using the contract study's material on "current employment status." Where applicable, the Commission will use some historical data presented in the contract study.

Question

(F) Related to the above question, how often is contract work found unacceptable?

Answer

Contract work has been unacceptable on very rare occasions.

Question

(G) What are you doing to minimize the number of instances of unacceptable work?

To minimize instances of unacceptable contract work, great care is taken in the selection of contractors with proven performance records. Careful monitoring of their progress is maintained, and vouchers submitted for payment which lack appropriate supporting documentation are rejected.

5. In FY 1984, the Commission held a consultation on comparable worth.

Question

(A) Did the Commission reach any conclusion about the doctrine of comparable worth at that time? If so, what is the conclusion?

Answer

No. The Commission has not yet taken a position on comparable worth. A staff report, based primarily on the consultation, has been sent to the Commissioners. The Commission will likely take a position on this issue on April 11.

Question

6. (A) What is the role of the regional offices?

Answer

Regional offices initiate studies and reviews of a variety of local and national civil rights issues. Most of this work is carried out through the State Advisory Committees, while some is done by staff. Findings and recommendations are reported to the Commission. Some projects support national Commission projects while others are of local concern.

The Commission also relies on regional offices and State Advisory Committees for followup work based on recommendations contained in Commission and State Advisory Committee reports. In addition, regional office staff and State Advisory Committees carry out liaison with Federal field installations and monitor the civil rights implications of their activities.

The regional offices project a local Commission presence and through the State Advisory Committees, made up of citizen volunteers, report to the Commissioners on local civil rights concerns.

Question

(B) How much do the regional offices cost?

Answer

In FY 1986, it is projected that the Commission will spend $4,628,000 on field operations. The estimate for FY 1985 is $5,047,000.

Question

(C) How many people work in the regional offices?

Answer

At present, 58 persons work in the ten regional offices. The regional offices are supported by a staff of five at Headquarters. In addition, all administrative support services are supplied through central services in Headquarters.

Question

(D) Do you believe that the regional offices materially help the Commission discharge its duties?

Answer

Yes, we believe the regional offices do help the Commission discharge its duties. They serve as the eyes and ears of the Commission in the field and keep us in touch with civil rights developments on the local level.

7. You indicate you will reduce by 25 percent the number of State Advisory Committee meetings held per state per year.

Question

(A) Do you have the authority to set the number of State Advisory Committee meetings?

Answer

Yes. As the parent body, the Commission establishes rules governing the operations of the State Advisory Committees. One of the rules sets the minimum number of meetings each SAC must hold each year. In FY 1984, each SAC was required to meet a minimum of two times. In FY 1985, the minimum number of meetings was raised to four. When the Agency's initial FY 1986 request was reduced, it became necessary to reduce the required number of SAC meetings to three. Some State Advisory Committees will meet more than three times in FY '86.

Question

(B) What will be the impact of a reduction in the number of SAC meetings?

Answer

As noted above, there is no reduction in the number of meetings SACs may hold. The reduction applies to the minimum number of meetings required. State Advisory

Committee projects will continue as specified in the appropriation request justification. We expect as many State Advisory Committee reports to be issued in FY 1986 as in FY 1985, and we estimate that the number of briefing memoranda submitted to the Commission will increase in the latter year.

Question

(C) Does this recommendation indicate the Commission wants to downplay the role of the SACs?

Answer

No. The Commission does not want to downplay the role of the State Advisory Committees. On the contrary, we have tried to make them more effective. For example, the number of persons on each State Advisory Committee has been set at 11 with the stipulation that State Advisory Committee members who do not attend meetings will be dropped from the Committee. The general level of activity of State Advisory Committees will not decline.

Question

(D) In general, do you believe the SACs perform a useful function and, if so, what is it?

Answer

The State Advisory Committees perform a very useful function. They provide citizen involvement at the grass roots level. They bring emerging civil rights problems to the attention of the Commission. They also assist the Commission in carrying out its clearinghouse function by disseminating Commission reports and recommendations in the field. They maintain liaison on civil rights issues with field components of Federal agencies as well as State and local governments and private civil rights organizations. They monitor civil rights activities of those departments, agencies, and jurisdictions.

Question

8. (A) How are members of State Advisory Committees chosen?

Answer

State Advisory Committee members are nominated by staff and individual Commissioners, and then approved by the full Commission. The Commission attempts to select a cross-section of influential community members who are interested in the Agency's work. Effort is made to include representation based on race, ethnicity, religious persuasion, political preference, as well as sex. Our objective is to identify perceptive individuals who are doers in their communities.

Question

(B) What are the terms of each member?

Answer

State Advisory Committee members are appointed for terms of two years.

Question

9. (A) Who sets the agenda for State Advisory Committees?

Answer

The agendas for State Advisory Committees are established by the Committees in consultation with staff of the regional offices. From time to time activities are suggested by the Commission.

Question

(B) Does the Commission have authority to stop a SAC study, if you believe it is duplicative or counterproductive?

Answer

Regional office staff must prepare concepts of proposed SAC studies. Those concepts are approved, modified, or rejected by the Office of the Staff Director. Project proposals are then prepared and are reviewed by the Staff Director.

When a study is completed, it undergoes legal sufficiency and jurisdictional review by an OGC staff attorney and, where appropriate, is sent to the affected agency for review. The final report is reviewed in the Office of the Staff Director. Upon approval, it is presented to and acted upon by the Commissioners. If the Commissioners approve the report, it is published.

This procedure for authorization, review, and approval of State Advisory Committee reports is very similar to the method used to authorize, review, and approve National office reports.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

[CLERK'S NOTE: The following material is submitted for the record on behalf of the fiscal year 1986 budget request of the Commission on Security and Cooperation in Europe.]

PREPARED STATEMENT OF HON. DANTE B. FASCELL

CHAIRMAN

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. Chairman and Members of the Subcommittee:

As you know, this will be my last appearance before this subcommittee in my capacity as Chairman of the Commission on Security and Cooperation in Europe to request support for the Commission's budget requirements.

I have had the honor of serving as Chairman since the Commission's creation in late 1976 and, hopefully, will continue to be actively involved in the important work performed by the Commission in carrying out the mandate set forth in Public Law 94-304.

ROTATION OF COMMISSION CHAIRMANSHIP

At present, my responsibilities as Chairman of the Foreign Affairs Committee require a great deal of my time and attention and, therefore, do not allow me to devote the effort that I feel is necessary as the Commission's Chairman to carry out its mandate.

The Commission is composed of six Members of the House of Representatives, six Members of the Senate and three members from the Executive Branch, one each from the Departments of State, Justice and Commerce, appointed by the President. The enacting legislation requires that the Speaker of the House designate one of the House Members as Chairman. When this legislation was adopted there was no objection in the House or Senate on this issue but there was some discussion at the first organizational meeting of the Commission pursuant to the legislation. At that time it was decided that there were so many responsibilities in the Senate to be divided up among too few Senators that a House Member would have more time to devote as Chairman. We reached an agreement at that meeting that a Senator be named to act as co-chairman although there was no legislation requiring the appointment of a co-chairman.

This arrangement continued, I feel, to the satisfaction and benefit of all concerned until 1981 when control of the

Senate changed from Democratic to Republican. We tried to accommodate the Senate at that time and informally divided the non-partisan staff into Democratic and Republican slots which would allow both the House and Senate Republicans and House and Senate Democrats to fill vacancies upon approval by a select personnel committee. This arrangement was worked out with Senator Dole and we operated under that agreement until the question was raised about the actual rotation of the chair itself. An agreement was reached and legislation was drawn up which would effectively rotate the chairmanship of the Commission between the House and Senate and would allow for the continuity and expertise of the staff and the Commission's ongoing work.

When I appeared before this Subcommittee last year, I fully expected that the legislation which I had introduced on November 18, 1983 and which passed the House of Representatives on February 7, 1984, H.R. 4504, to be concurred with by the Senate. This legislation required that the Chairmanship of the Commission be rotated to the Senate at the beginning of the 99th Congress and would thereafter rotate between the House and Senate alternately at the beginning of each succeeding Congress. Unfortunately, the bill was not acted upon before the end of the 98th Congress and I hope that the amended legislation which has been agreed on by both sides can be introduced within the next few weeks. This proposed legislation would rotate the chairmanship to the Senate as of April 15 of this year.

BUDGET REQUEST FOR FISCAL YEAR 1986

I wanted to begin my presentation by bringing the Subcommittee up-to-date on the status of the Commission. Although I will not be Chairman during Fiscal Year 1986, I'm confident that the Senate Chairman can work within the budget which I propose here today. With me today is Spencer Oliver, the Staff Director of the Commission, and Deborah Burns, the Commission's Budget Officer.

Public Law 94-304 created the Commission on Security and Cooperation in Europe and authorized for each fiscal year an appropriation of $350,000 to remain available until expended. The Foreign Relations Act of 1979 (Public Law 95-426) amended the enacting legislation to increase the amount of appropriated funds to $550,000. Our budget request for Fiscal Year 1986 is $550,000 which, when added to our estimated carryover of $119,000, will allow for an operating budget of $669,000. However, the proposed legislation does not limit the amount authorized to be appropriated as has been done previously. Should the new Chairman require additional appropriations during Fiscal Year 1986, he will be eligible under the proposed legislation to request such appropriation as he may deem necessary.

ANNUAL REPORT OF COMMISSION ACTIVITIES FOR 1984

Pursuant to Section 6 of Public Law 94-304, I hereby submit for the hearing record the Commission's Annual Report for 1984. The report includes all public hearings, meetings, reports and publications prepared by the Commission and expands on other CSCE activities which the staff has been involved. As required by law, this report is submitted to the Congress for each year which an appropriation is made.

FOLLOW-UP MEETINGS TO THE MADRID REVIEW CONFERENCE

The second follow-up meeting of the Conference on Security and·Cooperation in Europe began in Madrid, Spain, on November 11, 1980 and ended on September 9, 1983. This meeting mandated several so-called experts meetings on various subjects contained within the Final Act which include security and human rights issues to take place before the next follow-up meeting in Vienna, Austria begins on November 4, 1986.

One such meeting, the Conference on Confidence and Security-Building Measures and Disarmament in Europe, commonly referred to as the CDE, began in early 1984 in Stockholm, Sweden, and it is expected that the negotiations will continue will into 1986. The Commission has maintained one staff position on the U.S. delegation to the Stockholm Conference and has contributed a necessary element of CSCE expertise to the predominately military-oriented delegation. The purpose of the Stockholm Conference is to discuss and adopt confidence and security-building measures (CSBMs) which are early-warning devices involving the notification, verification and observation of military maneuvers and other military activities designed to reduce the risk of surprise attack in Europe or the start of war by miscalculation. Thus far, progress has been glacial due to fundamental differences between East and West on what constitutes the main substantive concern of the meeting.

Several staff members were part of the U.S. delegation to the experts meeting on Peaceful Settlement of Disputes which was held in Athens, Greece from March 21 through April 30, 1984. Delegates from the 35 countries participating in the Athens Meeting agreed on the text of a four-paragraph statement which, most likely, dooms the holding of further meetings on this subject in the CSCE context. The statement simply noted that a meeting was held, that much discussion on the examination and elaboration of a method for peacefully resolving disputes among the 35 states took place, and that no consensus on such a method was reached.

A Seminar on Economic, Scientific and Cultural Cooperation in the Mediterranean was held in Venice, Italy during the period October 16 through 26, 1984. The Seminar reviewed progress in the subject fields since the Valletta Meeting of 1979 and produced a final report calling for renewed action in specific areas. Members of the CSCE Commission staff, some with expertise from the previous seminar in Valletta, were on the U.S. delegation to the Venice Seminar.

One of the major achievements of the Madrid Meeting, and one that can certainly be credited to the Commission's efforts, was an agreement to hold an experts meeting on the subject of human rights and fundamental freedoms. The meeting is to be held in Ottawa, Canada, from May 7 through June 18, 1985, with a preparatory meeting beginning April 23. The participants will review implementation of the human rights provisions of the Final Act and will draw up conclusions and recommendations to be submitted to the governments of the participating States. Because of the Commission's recognized expertise in this field, a major contribution of staff time and effort will be expected in the overall planning of this meeting and in the staffing of the U.S. delegation. In fact, the staff already has been actively involved in preparing material on the implementation of the human rights provisions of the Final Act, drafting possible new proposals and providing information to interested non-governmental organizations. With the Commission's continued efforts, we expect this meeting to be the major focus of the CSCE process in the near future, given the continued lack of compliance on the part of the East European states and the Soviet Union with the human rights provisions.

The Final Act was signed on August 1, 1975 by President Gerald Ford, for the United States, Canada and 33 East and West European countries. A commemorative meeting on the tenth anniversary is expected to take place in Helsinki, Finland on August 1, 1985.

During Fiscal Year 1986, a six-week Cultural Forum will take place in Budapest, Hungary. A preparatory meeting to the Forum was held from November 21 through December 5, 1984 in which the 35 participating states succeeded in producing an agreed agenda and work program. A compromise was struck which would allow for the discussion of all topics at the Forum and not just official cultural exchanges as the East had desired. This constituted a satisfactory result for the Western participants who view the Cultural Forum not merely as an occasion for a general celebration of culture but as an opportunity for a serious examination of fundamental cultural problems in East-West relations. The Commission staff was represented at the preparatory meeting to the Cultural Forum and was instrumental in the negotiations for an agreed agenda.

The final CSCE meeting before the next main review meeting in Vienna, Austria, is the Experts Meeting on Human Contacts. A preparatory meeting is scheduled to convene on April 2, 1986 in Bern, Switzerland, with the main six-week meeting beginning on April 15, 1986.

GAO AUDIT

As I stated during these hearings last year, the U.S. General Accounting Office was requested to perform an evaluation of how well the Commission has carried out its mandate since its creation in late 1976. The draft report, entitled "Helsinki Commission: The First Eight Years," was delivered to me for comment on January 23, 1985. This draft is restricted pending revision and review by officials at the GAO and I am therefore not at liberty to release it for review to the subcommittee. I shall, however, forward it to interested Members upon final evaluation. All in all, I am pleased with the findings contained in this report and feel that I can, in good conscience, turn over the chairmanship of this Commission with the knowledge that all is in order and there are no outstanding problems or questions.

CLOSING REMARKS

In closing, I would like to say that I am proud to have served as Chairman of the Commission during these past eight years. I am proud of the work that has been done and am sure it will continue to build and grow on the solid foundation that we have created. I believe the Commission will continue to make a major contribution to the improvement of East-West relations as well as to the cause of human rights and fundamental freedoms.

To this end, as one of my last acts as Chairman, I would like to inform the Committee that a comprehensive report on the positive bilateral developments which have taken place among the signatory countries -- particularly East and West -- since the signing of the Final Act in 1975 has been prepared by the Commission staff and will be disseminated within the next few weeks. I have with me a preliminary draft of this report should Members of the Subcommittee or their staff wish to review it. This in-depth document contains a broad range of political, military, economic and humanitarian commitments. Numerous cooperative measures -- ranging from military security to economic cooperation to cultural exchanges -- aimed at improving East-West relations are endorsed in the Final Act. Equally important is the pledge each participating state made to respect the human rights and fundamental freedoms of its citizens. While the Final Act is not a legally binding agreement, it has, as former President Gerald Ford pointed out prior to his departure for the Helsinki summit, "important moral and political ramifications."

In the final anaylsis, of course, the report is an examination of each country's perceptions of the benefits it has derived from the Helsinki process. It is not meant to be a self-serving compilation of actions taken by each of them to show their fidelity to the Final Act. . . .

Previous Commission reports have endeavored to document and publicize violations of the Helsinki Final Act wherever they were committed. The Commission, in 1979, took a close look at U.S. compliance with the Final Act's provisions. This latter study, certainly the most thorough and comprehensive self-examination undertaken by any signatory country, addressed all of the criticisms and questions about U.S. compliance raised by Soviet and East European representatives about U.S. compliance.

Since its creation in 1976, the Commission has been in the forefront of developing the CSCE process. Through study missions, hearings, translations, research, speeches, articles, newsletters and periodic reports, the Commission has compiled the most thorough documentation in existence of the Helsinki process. This report, on the positive results of the process is, once again, unpredented and perhaps will be controversial as well. The Commission staff believes, however, that it is important to look at all sides of the story in order to have a comprehensive view. Although this report can, in no way, be said to provide a "balance" to the serious human rights violations in the Soviet Union and other East European states, it does attempt to document, as completely as possible, the positive side of the Helsinki balance sheet. It should be read with the other reports in mind.

I am particularly grateful for the cooperation and support that the Commission has received from you and your Subcommittee, Mr. Chairman. Without your help and understanding we could never have done so much for so many people who have looked to us for assistance. I hope, therefore, that you will continue to fund the Commission at the same level that you have funded it for the past four years.

I will be pleased to answer any questions you may have. Thank you.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

FISCAL YEAR 1986 BUDGET REQUEST

Under an amendment dated October 7, 1978 (Public Law 95-426), there is authorized to be appropriated and remain available until expended each fiscal year $550,000 to assist in meeting the expenses of the Commission in carrying out the provisions of Public Law 94-304 which established the Commission on Security and Cooperation in Europe.

The Commission on Security and Cooperation in Europe was established on June 3, 1976, pursuant to Public Law 94-304, approved by the 94th Congress. Under this legislation, the Commission is authorized and directed to monitor the actions of the 35 signatory countries, including the United States, which reflect compliance with or violation of the articles of the Final Act of the Conference on Security and Cooperation in Europe (CSCE), with particular regard to the provisions relating to cooperation in humanitarian fields. The Commission is further authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation and greater interchanges of people and ideas between East and West.

The enacting legislation provides that the Commission be composed of the following: (1) Six members of the House of Representatives, four members selected from the majority party and two selected from the minority party, after consultation with the minority leader of the House. The Speaker of the House shall designate one of the House Members as Chairman; (2) Six Members of the U.S. Senate, four members selected from the majority party and two, after consultation with the minority leader of the Senate, from the minority party; and (3) Three members to be appointed by the President, one each from the Departments of State, Commerce and Defense.

The Commission requests an appropriation of $550,000 for Fiscal Year 1986. It is estimated that there will be an unobligated balance of $119,000 available at the end of FY 1985 which, when coupled with our request of $550,000, will enable the Commission to carry out its mandate without further authorization.

A breakdown of this request by object classification follows:

ESTIMATE FOR FISCAL YEAR 1986 BUDGET

11.9	Personnel Compensation	$462,000.00
12.1	Personnel Benefits	$40,000.00
21.0	Travel and Transportation of Persons	$18,000.00
23.0	Rent, Communications and Utilities	$50,000.00
24.0	Printing and Reproduction	$45,000.00
25.0	Other Services	$42,000.00
26.0	Supplies and Materials	$12,000.00
	TOTAL:	$669,000.00

EXPLANATION OF FISCAL YEAR 1986 BUDGET REQUEST

Budget Authority FY 1984	$544,000.00
Unobligated Balance Beginning FY 1984	$182,000.00
Subtotal	$726,000.00
Total Budgetary Resources FY 1984	$726,000.00
Total Obligations Actual FY 1984	$504,000.00
Unobligated Balance (Carryover) End FY 1984	$222,000.00

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Budget Authority FY 1985	$550,000.00
Unobligated Balance Beginning FY 1985	$222,000.00
Subtotal	$772,000.00
Funds Available Start FY 1985	$772,000.00
Estimated Total Obligations FY 1985	$653,000.00
Estimated Unobligated Balance End FY 1985	$119,000.00

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Budget Authority FY 1986	$550,000.00
Estimated Unobligated Balance Start FY 1986	$119,000.00
Subtotal	$669,000.00
Estimated Funds Available Start FY 1986	$669,000.00
Estimated Total Obligations FY 1986	$669,000.00
Estimated Unobligated Balance End FY 1985	NONE

JUSTIFICATION OF ESTIMATES

PERSONNEL COMPENSATION

The estimated obligation of $462,000 covers salary costs for fourteen permanent full-time employees and one permanent part-time position, as well as temporary positions such as summer interns. The authorized staff positions include a staff director, deputy staff director, eight staff assistants, three clerical and administrative employees and two research assistants, one of which which is part-time.

11.1 Permanent Positions

Staff Director and General Counsel	$72,000.00
Deputy Staff Director	$50,000.00
Staff Assistant	$38,000.00
Staff Assistant	$36,000.00
Staff Assistant	$36,000.00
Staff Assistant	$34,000.00
Staff Assistant	$30,000.00
Staff Assistant	$20,000.00
Staff Assistant	$17,000.00
Staff Assistant	$17,000.00
Research Assistant	$12,000.00
Research Assistant (Part-time)	$5,000.00
Office Manager	$37,000.00
Administrative Assistant	$29.000.00
Receptionist/Secretary	$17,000.00
	$450,000.00

In addition to the above obligated staff positions, the Commission acquires, on a non-reimbursable basis, senior staff employees on loan from other Government agencies. Our press and information officer comes from the United States Information Agency and, at the present time, the Commission utilizes the services of an experienced economic officer on detail from the Department of State who acts as an advisor to the staff on East-West trade issues and serves as liaison with the State and Commerce Departments.

11.3 Positions Other Than Permanent

Summer Interns (4 Students/3 Months)	$12,000.00
	$12,000.00

PERSONNEL BENEFITS

The requested figure of $40,000 for personnel benefits covers the Commission's employer contributions to the following programs:

Congressional Retirement (7-1/2%)	$30,000.00
Health Benefits	$6,500.00
Life Insurance	$300.00
Medicare	$3,200.00
	$40,000.00

TRAVEL AND TRANSPORTATION OF PERSONS

One of the primary goals of the Commission is to promote wider public understanding of the provisions of the Helsinki Final Act, particularly with regard to human rights and human contacts. It is anticipated that an estimated $18,000 will be needed to cover domestic travel expenses during FY 1986. Commissioners and Commission staff are often invited to speak before private organizations, colleges, associations and other interested groups on such topics as human rights, military security issues, the follow-up conferences to the Madrid Review Meeting, and basically on all aspects of the Helsinki Accords.

In addition, hearing witnesses and individuals who are requested to appear before the Commission in an official capacity can be reimbursed for their travel expenses under this category. When necessary, interpreter and translation fees can also be authorized by the Chairman.

Overseas travel by Commissioners and Commission staff is covered under Section 502(b) of the Mutual Security Act of 1954. For the purposes of this Act, the Commission is deemed to be a standing committee of the Congress and is entitled to the use of funds in accordance with this section pursuant to Public Law 94-534 dated October 17, 1976.

RENT, COMMUNICATION AND UTILITIES

This estimate of $50,000 covers costs of services within the office such as rental and maintenance costs for word processing equipment, xerox copier and telephone answering machine; telephone service; telegrams; postage and other office related expenses.

Word Processing Equipment	$29,200.00
Xerox Copier Monthly Maintenance	$6,600.00
Telephone Service	$8,200.00
Postage/Telegrams	$4,400.00
Other Services	$1,600.00
	$50,000.00

PRINTING AND REPRODUCTION

It is anticipated that $45,000 will be needed to cover the cost of printing Commission material such as hearings, reports, surveys, questionnaires, brochures and other publications. Also included is the cost of printing official stationery, franked envelopes, press releases and the bi-monthly CSCE Digest.

Hearings (Printed by GPO) Four hearings @ approximately $5,000 each	$20,000.00
Envelopes, Stationery, etc.	$5,000.00
Other Printing: brochures, press releases, CSCE Digest, newsletters, reports and materials	$20,000.00
	$45,000.00

OTHER SERVICES

An estimated $42,000 will be needed to cover the costs for contract service for administrative and personnel assistance from the General Accounting Office and other consultant fees. It also includes the cost of stenographic services for Commission hearings and meetings as well as the service of translators, if necessary, for foreign-language documents.

Contract for Administrative Services General Accounting Office	$10,000.00
Consultant Fees	$40,000.00
Miscellaneous: Stenographic and photographer services for hearings; translation fees	$2,000.00
	$42,000.00

SUPPLIES AND MATERIALS

This estimate of $12,000 covers the cost of operating supplies and materials including subscriptions to newspapers, periodicals, magazines and other pertinent publications, books and research material.

Office Supplies	$9,000.00
Publications: Newspapers, books, periodicals, research material	$3,000.00
	$12,000.00

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[CLERK'S NOTE: The following material is submitted for the record on behalf of the fiscal year 1986 budget request of the U.S. Equal Employment Opportunity Commission.]

PREPARED STATEMENT OF CLARENCE THOMAS

CHAIRMAN

U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to present the Fiscal Year 1986 Budget Request for the Equal Employment Opportunity Commission (EEOC).

The Commission is responsible for enforcing:

1. Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination based on race, color, religion, sex, or national origin;
2. The Age Discrimination in Employment Act of 1967, as amended;
3. The Equal Pay Act of 1963; and
4. In the Federal sector only, prohibitions against discrimination because of handicap under Section 501 of the Rehabilitation Act of 1973.

The 1986 budget request for EEOC is $158.8 million.

Of the $158.8 million, $19.5 million will be used to continue the funding relationship which exists between EEOC and State and Local fair employment practice agencies. These agencies assist EEOC in resolving employment discrimination complaints.

The remaining $139.3 million will be used largely to pay the salaries and overhead costs for EEOC's staff. Of this amount, 77 percent is used directly to pay for staff salaries and benefits, while another 15 percent is used for such nondiscretionary items as rent, utilities, telephones, office supplies, and equipment. Only 8 percent of the Commission's internal operating expenses fall within the category which could be classified as "discretionary." These expenses are not discretionary in a real sense, since they are essential to the Commission's enforcement of its congressional mandate to receive, investigate, attempt to resolve and litigate charges and complaints of employment discrimination, as well as to provide technical guidance and assistance to private and public employees.

The budget level requested for FY 1986 will allow the Commission to support a full-time equivalent staff level of 2,976. Ninety-two percent of the staff will be assigned to work on enforcement program activities, with 77 percent of the staff located outside of Washington, D.C. in EEOC's 48 Field Offices around the country.

STRENGTHENING THE MANAGEMENT OF THE AGENCY

During the three years I have been Chairman of the EEOC, I have made, and continue to make, improved administrative and programmatic management the Agency's top priority. As a result of this emphasis, we have been able to make certain that all funds appropriated for the Commission are utilized in the most effective manner possible to fulfill the responsibilities given to the Commission by Congress. I have submitted for the Committee's review reports recently prepared by our Management and Program Operations offices and would like to highlight just a few of the actions taken in these areas.

IMPROVEMENTS IN PROVIDING EXECUTIVE DIRECTION AND PROGRAM SUPPORT

Enhanced attention has been devoted to the professional development of EEOC employees. As a consequence of a massive training effort during FY 1984, over 6,000 training experiences were provided to Commission employees, as compared to only 300 participants at EEOC sponsored training during FY 1982. As a result of this training emphasis on compliance and litigation skills, Commission employees' competence in these areas has been noticeably enhanced. This training is a key component in my program to assure that our personnel have been equipped to carry out the mandate you have given to this agency.

In the personnel area, a vigorous position classification review program has been initiated throughout the Agency to assure that all EEOC employees are placed in jobs which are correctly graded and classified. The review will be completed by the end of this fiscal year. In addition, nearly all outside hiring is now done at the entry level for the position in order to better control personnel costs and maintain efficient utilization of on-board staff.

In the financial area, EEOC recently obtained approval for the first time from the General Accounting Office (GAO) for its financial accounting system. In addition, GAO has now recognized the Agency for having successfully corrected all of the operating deficiencies which existed at the time of its 1982 fiscal audit of the Agency. We have also implemented a uniform agency-wide performance system which holds all managers and supervisors directly accountable for the accomplishment of specific Commission and office objectives.

IMPROVEMENTS IN THE OPERATION OF THE ENFORCEMENT PROGRAM

Great changes are also being made in the Commission's enforcement efforts. In response to new directions from the Commission, EEOC Field Offices recently accomplished changes in structure and in substantive emphasis. The two primary objectives of field operations have been operational efficiency and quality charge processing.

During FY 1984, Field Offices were reorganized to increase their efficiency. The number of Compliance units was reduced to four: the Intake/State and Local Unit, the Rapid Charge Processing Unit, the Extended Charge Processing Unit, and the Systemic Unit. The structure and staffing of District Office administrative support units were streamlined. Through the addition of Extended Processing Units to Area Offices, in conjunction with the Commission's move to a three-tiered Field Office structure, the ability of the Commission to conduct full investigations was enhanced. The Commission began to address the problem of staffing imbalances among Field Offices by reducing staff in two overstaffed District Offices and using the resulting positions to increase staff in understaffed Offices.

In December 1983, the Commission adopted a resolution which significantly altered the field's emphasis in charge processing. From 1979 through 1983, a large portion of the Commission's administrative enforcement effort was devoted to obtaining negotiated settlement of charges prior to a finding on the merits of those charges. While this effort was recognized by the

Commission in its December 1983 resolution as a valuable way of achieving settlements and avoiding the accumulation of an aging inventory of charges, the Commission directed a move to more complete investigations and findings on the merits. Through accomplishing more complete investigations with findings on the merits, the Commission is seeking to augment its litigation program and to achieve greater remedies through conciliation agreements.

Field staff were directed to put in place a more formalized procedure for assuring that charge processing was of the highest quality. To that end, a quality assurance program, similar to those instituted in the private sector, was implemented on a pilot basis in three District Offices and in three volunteer State and Local agencies. In addition, a program of routine quality control audits of Field Offices was started, during which closed and open charge files were reviewed for quality in substance and procedure.

During Fiscal Year 1984, the field also implemented two Commission program initiatives. The Voluntary Assistance Program was designed to educate the smaller employer in the requirements of the statutes enforced by EEOC. District Offices held 56 seminars attended by over 2,100 representatives of smaller employers. Also implemented was the Expanded Presence Program, which seeks to provide information to members of the public in identified "underserved" areas of their rights under equal employment opportunity laws. Staff made over 700 visits to contact sites away from the office location, during which nearly 3,000 charges were taken.

The impact of the Commission's shift in emphasis in charge processing can be seen in the increased percentage of charges resolved on their merit, in the number of charges identified as litigation vehicles and subsequently referred to legal units for litigation, and in the increase in litigation authorized by the Commission.

LITIGATION ACTIVITIES

EEOC's litigation program has also been producing substantial results. The Commission filed 226 cases in FY 1984. This represents an increase of 66 percent over the 136 cases which were filed in FY 1983.

In FY 1984, approximately 200 cases were resolved with nearly $40 million in benefits. These resolutions ranged from settlements of one-on-one cases to large class actions such as Burlington Northern, B&O and C&O Railroads, and Allstate Insurance. The total settlement for these cases alone amounted to over $24 million in backpay and other benefits for more than 9,200 people. During the year, four other cases were settled for more than $1 million each.

In addition, the Commission recently achieved major resolutions in actions against the Equitable Life Assurance Society and the Teachers' Insurance and Annuity Association (TIAA-CREF). In the Equitable case, EEOC recovered more than $12 million in cash for age discrimination victims. In TIAA-CREF, the Commission recovered approximately $9 million in cash reimbursements for men and women in a case where the company relied upon sex-segregated mortality tables to compute pension benefits and future retirements for men and women which have been estimated by TIAA-CREF to exceed $1 billion.

Similarly, in FY 1984, five systemic litigation case were settled for over $5 million in backpay and other benefits.

Over the past two fiscal years, the Commission has provided specific policy direction and guidance to staff, particularly with respect to litigation, designed to enhance the effectiveness of our enforcement efforts, to obtain full relief for victims of discrimination, to deter potential violations of the statutes we enforce, to develop legal standards, and to promote and encourage voluntary resolutions. These policy initiatives, specifically the new enforcement policy and remedies policy, promise to buttress and expand our enforcement efforts. The Commission will continue to investigate and litigate individual, class, and systemic charges. It will seek full and effective relief for all victims of discrimination, whether in one-on-one, class, or systemic cases. Henceforth, the Commission intends to carry out swift, certain, and effective prosecution of those who violate the statutes we enforce.

As these new initiatives are integrated into our enforcement mechanism, we fully expect to experience a burgeoning Commission caseload. Accordingly, by the close of FY 1985, we intend to have filed at least twice as many lawsuits as in FY 1984.

SUMMARY

As these examples illustrate, in nearly all areas of the Commission's operation, management and programmatic initiatives are being launched. Many of these initiatives have already started to produce results, while others will begin showing their impact later in FY 1985 and FY 1986. As a result of these management improvements, the staffing and funding levels being requested will continue to allow EEOC to fully meet its responsibilities in the effort to eliminate employment discrimination.

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JAPAN-UNITED STATES FRIENDSHIP COMMISSION

[CLERK'S NOTE: The following material is submitted for the record on behalf of the fiscal year 1986 budget request of the Japan-United States Friendship Commission.]

PREPARED STATEMENT OF W. GLENN CAMPBELL
CHAIRMAN
JAPAN-UNITED STATES FRIENDSHIP COMMISSION

Mr. Chairman and distinguished Members of this Subcommittee:

I am pleased to testify before you for the second time on behalf of the Japan-United States Friendship Commission. I have with me our newly appointed Executive Director, Mr. Lindley S. Sloan, our recently designated Associate Executive Director, Dr. Eric J. Gangloff, who resides in Tokyo, and our Program and Administrative Officer, Mr. Joseph B. Schreiber, who is a Foreign Service Officer detailed to the Commission. As these personnel changes have occurred in recent weeks and months, I have asked these gentlemen to join me today so that you could meet our "new team" at the Commission.

In my initial testimony as Chairman last year, I explained that whereas my experience with Japan had been less extensive than my distinguished predecessors, Professors John Hall of Yale and Robert Ward of Stanford, who are noted Japan scholars, I was interested in the objectives of the Commission because of my experience as an economist and manager of a major academic research institution concerned with international affairs. Needless to say, in both capacities one can hardly avoid becoming aware of the ever-increasing importance of Japan in the world. In the ensuing year since my last appearance here, I can only say that I have come to appreciate even more fully the importance and potential of the Commission as a necessary and constructive force in Japan-United States relations.

A brief review of the origin and purposes of the Commission may be in order here to underscore the continuing relevance of its work to the improvement of Japanese-American relations. In passing the Japan-United States Friendship Act (P.L. 94-118) in 1975, the Congress acknowledged the unique character and great importance of the relationship between Japan and the United States. In particular, the need was felt to strengthen its foundation through educational and cultural exchange programs at the people-to-people level. The Congress was searching for the means to develop the knowledge, the leaders, and the friendly associations which in turn would improve the likelihood that problems which arose on the national level might be resolved on a basis of mutual understanding and respect.

To carry out these efforts, the Congress established the Commission - the only federal agency whose sole purpose is to promote friendship and understanding with a single foreign country. In the Friendship Act, it also appropriated the Japan-United States Trust Fund, an endowment denominated in both yen and dollars with a combined value of approximately $36 million at the exchange rates then in effect. These two funds represented a portion of the money paid by Japan to compensate the United States for post-World War II assistance and for certain public facilities built by the United States on Okinawa prior to its reversion to Japan. The Commission was authorized to invest the Fund in government obligations in both countries, and to expend the interest earnings, subject to annual appropriation thereof, and up to five per cent annually of the original principal of the Fund to carry out the purposes of the Act. Aside from a generous gift of $2 million in 1981 from the Japanese Government, the Fund has not been augmented.

In FY 1984, the Commission awarded more grants - a total of 113 - than in any previous fiscal year. Program outlays were also at record levels, totalling $3.7 million in both the dollar and yen funds. These figures reflect the growth of the Commission's role in educational and cultural exchanges as well as its continuing efforts to encourage activity in several new program areas. Expenditures from the dollar appropriated fund exceeded investment and other income by $420,956 for the year, and the excess would have been higher had not the Commission been able to expend some $523,000 of the 1981 Japanese gift to support the Regional (outreach) Program. To relieve pressure on the dollar fund, the Commission is transferring as many obligations as possible to the yen fund, largely through dual grants in instances where both currencies can be used. At the close of FY 1984, the value of the dollar fund, including the unexpended Japanese gift, stood at $18,052,938, slightly more than the originally appropriated $18 million. The yen fund was only slightly less than that originally appropriated but because of changes in the exchange rate now has a value equivalent to $16,509,788. The combined value of the dollar and yen fund was $34,562,726 at the end of FY 1984.

Outlays for FY 1986 are estimated at $2,450,000, which represents $2 million of the dollar appropriated funds and $450,000 from the Japanese Government donation, for which appropriation is not required. In addition, the Commission requests an amount of Japanese currency not to exceed the equivalent of $1.2 million based on exchange rates at the time of payment of such amounts. Details of the Commission's financial status and projected needs are contained in our formal appropriation request which was forwarded to you earlier.

It does not require special insight to comprehend that the goals assigned to the Commission remain valid. Merely reading the daily newspaper demonstrates the importance and complexity of the relationship between the United States and Japan. As our association becomes more intimate, frictions seem to intensify. Part of the reason lies in the narrow and fragile base of the relationship. While the history of the past thirty years demonstrates that the United States and Japan have much in common in terms of broad national objectives, the record also shows that centuries-old differences in thought patterns, value systems, social and economic behavior, decision-making processes and means of communication can readily lead to mutual misunderstanding. Moreover, there is a language barrier that seems all but insurmountable, especially for Americans, and a severe imbalance in the amount of attention that the two countries devote to each other. American understanding of Japan suffers from lack of knowledge and inattention, except during a period of crisis or dispute when the media tends to interpret events within a narrow political or economic focus. On the Japanese side, the public is exposed to far more material on the United States than Americans are on Japan, but the problems lie in the uneven quality of interpretation and the type of material chosen for presentation. Japan's highly centralized educational system largely ignores the United States, and American affairs, as extravagantly covered in the Japanese media, are not balanced by extended or serious treatment in university life. American pop culture is readily adopted, but our enduring cultural achievements receive little recognition, study or exposure.

The Commission attempts, in accordance with its mandate, to address these discrepancies. It funds projects that promise, over the long term, to improve mutual understanding between the Japanese and American people by enhancing the quality and extent of educational opportunities in both countries, by expanding artistic and cultural exchanges, and by encouraging discussion of and cooperation on problems and issues of fundamental interest to the bilateral relationship. Accordingly, the Commission continues to sponsor:

> Educational Programs about Japan for Americans. These concentrate on higher levels of education in the interest of improving the broad capacity of major institutions to teach effectively about Japan, but lately have included greater efforts to train specialists on Japan in economics, business, law and journalism. These efforts, include research on Japanese subjects at major American universities, support for library acquisitions on Japan, and intensive Japanese language training at Cornell University and in Japan.
>
> Educational Programs about the United States for Japanese. These have concentrated on curriculum enrichment in Japanese universities through provision of research facilities and

teaching materials, post-doctoral research and conference opportunities for faculty members, and more recently, the training of faculty to teach new courses about the United States in leading Japanese universities. This program also features two academic seminars - in Kyoto and Sapporo - each year which bring American scholars to Japan to share research and fresh viewpoints on various aspects of American Studies.

Arts and Cultural Exchanges. The Commission has become a significant factor in developing appreciation in each country of the cultural values and artistic accomplishments of the other through assistance to a wide variety of cultural and artistic exchanges and concommitant scholarly activities. The Creative Artists Exchange Fellowship Program, co-sponsored with the U.S. National Endowment for the Arts and the Cultural Agency of the Japanese Government, whereby five creative artists from each country are exchanged annually, is illustrative of the indepth approach pursued by the Commission in this field.

Research and Programs for Public Education. This category has featured traditional counterpart exchanges of legislators, school administrators, journalists and television productions, and a translation service which provides American media with examples of Japanese thinking on various issues. It has featured most recently a program of support for regional organizations throughout the United States which conduct programming on Japan, which now includes Japan-America Societies in Atlanta, Boston, Burlington (Vermont), Chicago, Honolulu, Houston, Los Angeles, Murfreesboro (Tennessee), New York, Portland (Oregon), Portland (Maine), San Francisco, Seattle, St. Louis, and Washington, D. C. Additionally, the Commission now supports the following general World Affairs organizations with active Japan programs: The Chicago Council on World Affairs, the Cincinnati Council on World Affairs, and the Utah Institute for Studies in the Humanities. More attention has also been given to binational collaborative academic research projects to help illuminate the causes and alternative solutions to current or impending policy issues.

Since these program areas have not been substantially altered since 1977, the Commission intends during the coming year to conduct an overall review of its policies and program priorities to determine whether the Commission's activities are effectively carrying out the Congressional mandate and are as responsive as they should be in the context of current Japanese-American relations.

In a very perceptive article,* David Hitchcock, long-time Counsellor for Public Affairs in the U.S. Embassy in Japan, recently contrasted the confluence of the two countries' overall economic and political goals with the frequent static in communication lines between Japan and the United States. He attributed this to the lack of sound educational and cultural foundations between the two countries. After citing various inadequacies in language teaching, education and public understanding, Hitchcock concluded, and I quote, "Publicly and privately, Japan and the U.S. are trying to deal with these frayed communication lines, but neither is doing enough. The two countries plan to study each other's secondary education systems and expand Japanese language teaching in American schools - proposals made by President Reagan during his November 1983 visit to Japan. Internationalization is one of the goals of Prime Minister Nakasone's proposed educational improvements, but, too often, strengthening international educational foundations is an afterthought for both societies. It should trouble us that these basic communication ingredients in the Japan-U.S. relationship are so thin. Both countries have to deepen their sensitivity to each other's traditions, concerns and dreams. Exchange of hamburgers and sushi isn't enough. Future history books shouldn't say that we failed despite many common interests simply because we didn't pay enough attention to the cultural and educational foundation of the relationship." Mr. Chairman, as one of the principal U.S. agencies concerned with Japan-United States relations, the Commission, I assure you, is making every effort to build the cultural and educational foundations whereof Mr. Hitchcock speaks.

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* The Asian Wall Street Journal
Weekly, December 31, 1984

In carrying out our mission, the Commission seeks the continued support and guidance of the Congress. I would be happy to answer any questions you may have. Thank you.

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SECURITIES AND EXCHANGE COMMISSION

[CLERK'S NOTE: The following material is submitted for the record on behalf of the fiscal year 1986 budget request of the Securities and Exchange Commission.]

PREPARED STATEMENT OF HON. JOHN S.R. SHAD
CHAIRMAN
SECURITIES AND EXCHANGE COMMISSION

This statement together with the Commission's fiscal 1986 budget is submitted for inclusion in the record.

The Commission is requesting $107,267,000, which represents less than a 1% increase over the current appropriation, adjusted for the $1,045,000 pay supplemental. The $885,000 net increase results from the following adjustments.

Additions of:

- $3.3 million to support the pilot electronic disclosure system, Edgar, and
- $3.1 million in mandatory pay and personnel cost increases.

Reductions of:

- $2.9 million to reflect the five percent pay reduction proposed by the Administration,
- $1.8 million for reductions in the agency's administrative costs, and
- $850,000 related to the proposed repeal of the Public Utility Holding Company Act of 1935.

Net Results

The Commission has been making a net contribution to a reduction in the federal deficit. In fiscal 1983 and 1984, registration, transfer and other fees have exceeded the Commission's expenses.

This has only happened once before in the Commission's 50 year history. The savings in the last two years have totalled $36 million. Total fiscal 1985 and 1986 fees are also expected to exceed the Commission's expenses, by about $50 million. These savings are remitted directly to the U.S. Treasury.

1984 Results

The Commission's fiscal 1984 activities are described in detail in its 1984 annual report, which was distributed to Congress in January. The following are highlights of the Commission's 1984 results.

Investor protections and corporations' financing flexibility were increased, and unnecessary corporate paperwork and other expenses, ultimately borne by investors, were reduced. Through automation, paperwork reduction and other staff initiatives, record results -- or the highest levels in years -- were achieved in the volume and efficacy of

- enforcement actions,
- investment company and adviser inspections,
- broker-dealer examinations and reports processed,
- self-regulatory organization inspections,
- full disclosure filings processed,
- and appellate and other cases opened.

Since fiscal 1981, the annual volume of these and other Commission activities has been increased by 19% to 78%, with 5% less personnel. Also, the 1981-84 average annual rate of accounting firm peer reviews, under the SEC's oversight, has been increased more than 100% over the 1978-80 rate.

Summary of Activities

SEC Fiscal Years Ended Sept. 30th	1981	1982	1983	1984	1981-4 Change
Investment Co. & Adviser Inspections	748	1,065	1,085	1,335*	+78%
SRO** Inspections	12	19	18	20*	+67%
Appellate and Other Cases	102	115	143	167*	+64%
Enforcement Actions Brought	191	254	261	299*	+57%
Broker-Dealer Oversight Examinations	278	249	324	389*	+40%
Broker-Dealer Reports Processed	6,106	6,599	7,067	8,290*	+36%
Full Disclosure Filings Processed	56,919	63,423	65,550	67,466*	+19%
Staff-Years	1,982	1,881	1,921	1,885	- 5%
Fees as a Percent of Budget	81%	94%	110%	129%*	

* A record or the highest level in years.

** Self-Regulatory Organization.

Edgar

The pilot, high-speed electronic disclosure system -- known as "Edgar" -- commenced on schedule in September. By April 5, 782 documents had been filed electronically -- over telephone lines, on diskettes and magnetic tapes. The 150 participants range from Exxon, General Motors, IBM and other major industrial, utility and financial corporations, to small limited partnerships. GMAC -- one of the most frequent Edgar filers -- has indicated that the electronic system has enabled them to respond more rapidly to changing market conditions.

Edgar is intended to improve -- and accelerate dramatically -- the filing, processing, dissemination and analysis of corporate information; the manner in which many investment decisions are made and executed; the efficiency of the securities markets; and the Commission's ability to discharge its mandate to protect investors and maintain fair and orderly markets.

In the future, as corporate reports are electronically filed with the SEC, investors, securities analysts and others will have instant access to them on home and business computer screens. The filings will also be available simultaneously to the securities exchanges and other self-regulatory organizations, and to the 50 state securities commissions. California, Georgia and Wisconsin are already accessing Edgar filings.

In the spring of 1984, Mathematica Policy Research, Inc. conducted a national survey of individual investors, institutional investors, and securities firms to determine the market demand and user benefits associated with Edgar. The study revealed that 238,000 to 1.9 million individual investors and firms would be interested in subscribing to Edgar services priced from $4800 to $300 a year. The study also indicated that the value of Edgar, in terms of shorter processing times and the broader, more rapid dissemination of information, could range from $1.2 billion to $2.3 billion annually.

On September 5, 1984, the Commission issued a release for comment on financing an operational system. It is estimated that the system will cost a contractor $63 million over 7 years. The contractor will have to obtain 60,000 subscribers at $25 per month ($300 per year) to generate a profit. It appears reasonable to assume this level of subscription as each of 20 firms now have over 100,000 subscribers to their information services. Depending on timing and the terms of the contract, SEC costs in 1987 could range from $1.2 million to $18.7 million, the initial annual cost of the operational Edgar system.

This fall a request for proposals will be issued for a fully operational system, with the expectation that a contract will be awarded next spring. The Commission is proceeding with a view to phasing all 10,500 SEC issuers into the Edgar system between 1986 and 1988.

Enforcement

The 299 enforcement actions initiated in fiscal 1984 included 128 cases (43%) alleging misconduct by broker-dealers, investment advisers and other regulated entities; 48 cases (16%) alleging failure to register securities offerings; 36 cases (12%) alleging issuer fraud and reporting violations; 33 cases (11%) alleging financial disclosure violations by issuers and their employees; 18 cases (6%) alleging misconduct by accounting firms, their partners and employees; 13 cases (4%) alleging insider trading; 12 cases (4%) alleging market manipulation; and 11 cases (4%) arising out of changes in corporate control.

Insider Trading Sanctions Act

The Insider Trading Sanctions Act was introduced by Senator D'Amato and signed by the President in August. Most inside traders have been enjoined from future violations, and required to disgorge only their profits, which has not been much of a deterrent. Now they will be subject to civil fines, up to three times their profits. The Act also increased criminal fines for securities law violations from the $10,000 established 50 years ago to $100,000 per count.

Shelf Registration Rule

The revised Shelf Registration Rule, adopted last November, has increased the largest and most creditworthy corporations' financing flexibility and has reduced their expenses, for the benefit of their shareholders, by hundreds of millions of dollars per annum, without compromising full disclosures. These large savings are principally due to keener competition among underwriters, and among the institutions which purchase the bulk of such issues, whether under shelf or conventional offerings.

Proxies and Mutual Fund Prospectuses

Simplification and improvement of proxy statements and prospectuses during the past year have reduced their cost and increased their utility to investors.

New Options

As a result of legislation which implemented the SEC/CFTC Accord, new options and futures have been authorized which permit investors and corporations to hedge stock market, foreign currency and other risks at a fraction of the cost of prior means of hedging or reducing such risks.

Intermarket Surveillance

At the Commission's initiative, the exchanges are installing electronic intermarket stock and options surveillance systems and transaction audit trails for the quick identification of inside traders and market manipulators. Audit trails also reduce transaction reconciliation costs, which are ultimately borne by investors.

Shareholder Communications

Rules adopted by the Commission last year will telescope the time and expense of corporations' communications with their shareholders, by requiring broker-dealers (commencing next January) to provide issuers with the identity of those shareholders, who do not object. Legislation introduced in the Senate would also permit the Commission to adopt similar rules for banks. The Commission recommends Congressional action on this legislation during the current session.

Bush Task Group

The recommendations of Vice President Bush's Task Group on Regulation of Financial Services include consolidation within the SEC of the securities registration and reporting requirements of all publicly-owned banks and thrifts. This will result in more uniform disclosure and enforcement requirements at lower costs. Favorable Congressional action on the Task Group's recommendations is also recommended.

Foreign Investment Companies

Last year, the Commission recommended that the Investment Company Act be amended to make it easier for the Commission to permit foreign investment companies to register and sell shares in the United States when the Commission finds this to be consistent with the purposes of the Act and the protection of investors. Congressional consideration of this proposal is also requested.

SIPA Amendments

The Securities Investor Protection Corporation ("SIPC") has proposed legislation to amend the Securities Investor Protection Act of 1970 ("SIPA") -- in order to preserve the jurisdiction of bankruptcy judges over SIPC liquidations of insolvent broker-dealers and to make other changes in SIPC liquidation procedures. The Commission supports these objectives.

Technical Amendments

In March of this year, the Commission submitted to Congress an updated version of the Securities Law Technical Amendments Act, which would make various technical changes and conforming amendments in the federal securities laws. The bill has been introduced in the House as H.R. 1604. Congressional consideration of this legislation is requested.

SEC Staff

The 50th Anniversary year results of the SEC are a tribute to the Commissioners and the fine men and women who serve throughout the agency.

Looking Ahead

The 1985-1986 period offers the prospect of major improvements in the regulatory structure of the financial services industries and the exciting potential of high-speed electronic filing, processing, dissemination and analysis of corporate information (the Edgar system). The Commission will also continue its efforts to increase investor protections and reduce unnecessary corporate expenses, that are ultimately borne by investors. Other major initiatives include the following:

- Internationalization - For over two centuries, the United States has been a primary beneficiary of foreign investment. To facilitate the international mobility of capital, the SEC is soliciting public comments on ways to harmonize the disclosure and distribution practices for multi-national securities offerings. The Commission is initially focusing on such offerings in the United States, the United Kingdom and Canada. A major portion of such offerings originate and are marketed within these three countries. In addition to our common language, our securities laws and disclosure requirements are more similar than those of other countries.
- Immobilization of Securities Certificates - The Commission has initiated a program to accelerate the immobilization and ultimate elimination of securities certificates, through the use of central depositories and high-speed electronic book entry systems. The savings to investors, who ultimately bear the costs of printing and transferring securities, are expected to aggregate hundreds of millions of dollars

annually. But even in the absence of such savings, the speed and simplicity, the future paperwork and other problems avoided, will more than justify this effort.

- Employee Benefit Plans - The SEC is reviewing the registration of securities offered under employee benefit plans. About 60% of the companies registered with the Commission have such plans. The registration costs which are ultimately borne by shareholders, can be significantly reduced by eliminating unnecessary and duplicative filings under SEC and Employee Retirement Income Security Act (ERISA) requirements. The objective is to reduce costs by over $100 million per annum, without compromising investor protections.
- Short-Swing Profit Rules - For the first time since their enactment 50 years ago, the SEC is in the process of updating Section 14 of the Securities Exchange Act of 1934 - the short-swing profit rules - to reflect judicial decisions and the dramatic increase in the number, size and complexity of executive compensation plans. The potential savings exceed $100 million per annum.
- Small Business Registrations - Companies with 500 shareholders and $3 million of assets are presently required to file with the Commission until their shareholders drop below 300, or if they have less than 500 shareholders and less than $3 million in assets for a three-year period during which no registration statement has become effective. The SEC is studying the effects of raising the filing threshold requirements to companies with over $5 million in assets and 500 shareholders during their most recent three years. This would exempt about 600 small businesses that presently incur very high compliance costs per shareholder. Such companies would continue to be subject to the anti-fraud provisions of the securities laws.

- Broker-Dealer Registration - The basic broker-dealer registration form, Form BD, is being recast in plain english, shortened, and jointly adopted by the SEC and the North American Securities Administration Association (NASAA). A simplified, joint registration form will significantly reduce the costs of registration. Progress is also being made on the processing and storage of these forms electronically.
- Audit Trails - The staff is working closely with the National Association of Securities Dealers and the Chicago Board of Options Exchange to develop transaction audit trails, which will improve market surveillance and reduce transaction reconciliation costs, ultimately borne by investors.
- Investment Adviser Regulation - As part of the joint efforts of the SEC and NASAA to harmonize and simplify state and federal regulation of investment advisers, the Commission will begin training state personnel in conducting compliance inspections. State-conducted inspections will enhance the scope of investment adviser oversight, without increasing the federal government's costs. A simplified investment adviser registration, Form ADV, will also be jointly adopted by the SEC and NASAA, thereby permitting automated processing and review, speeding the registration process and reducing its costs.
- Investment Company Disclosure - Plans to automate the receipt, processing, and analysis of investment company disclosures are intended to accelerate and improve the process. A computerized database of investment company information is also planned to facilitate disclosure analysis and enforcement investigations.

SUBMITTED QUESTIONS

QUESTIONS SUBMITTED BY SENATOR LAXALT

EDGAR

QUESTION: The SEC is requesting an additional $3.3 million for its pilot electronic filing system, known as Edgar. What's the current status of this program and what are your plans for the rest of this year and next year?

ANSWER: The purpose of the Edgar system is to accelerate dramatically the filing, processing, dissemination and analysis of corporate information to make it instantly available to investors, securities analysts and others on home and business computer screens.

Over 18 months were spent on feasibility and economic studies, and the development of the pilot system, which commenced on schedule on September 24th, 1984. It has been in operation for 5 months.

There are over 150 voluntary participants, ranging from AT&T, Exxon, GM, IBM, RCA, Mobile and other major corporations, to medium sized companies and small limited partnerships - a broad cross section of SEC registrants. Over 800 documents have been filed electronically. The reactions have been very favorable.

Three state securities commissions are participating in the pilot. California, Georgia and Wisconsin have access to Edgar filings.

The purpose of the pilot is to improve and enhance the system, before phasing in all SEC registrants.

The pilot has been enhanced by internal and external data bases and electronic mail and files.

This year and next, additional capabilities will add: automated selective review, financial data tagging, and financial profiles. Also, the review staff will receive training in electronic procedures. The number of participating state commissions will be increased. In addition to the Corporation Finance Division, the Investment Management Division and other areas of the SEC will be added.

An RFP for the operational contract will be issued this fall, and a contractor selected in the spring of 1986. Conversion to the operational system is planned to commence in October 1986.

QUESTION: Have you developed any further your plans to regulate the fees charged by the vendor for access to Edgar?

ANSWER: The SEC has solicited public comments on financing alternatives.

A specific plan has not as yet been adopted, but it is presently contemplated that all purchasers of wholesale data will have equal access to it, at Commission controlled rates.

Through wholesale market control, the SEC can ensure equal access to the data.

All vendors will be able to compete in the "value added" or software market. The Commission will control and approve the cost side of the wholesale price equation. Once the total cost for wholesale dissemination has been established, the Edgar contractor will be able to charge a fee which essentially divides the cost among wholesale purchasers. A reasonable profit, also approved in advance by the Commission, will be built into the wholesale cost. Under this arrangement, data will be available for a reasonable fee, and the contractor will have a fair return on investment. Additionally, the retail market will be actively competitive.

PUBLIC UTILITY HOLDING COMPANY ACT

QUESTION: The Commission is requesting the repeal of the Public Utility Holding Company Act. What's the rationale for this request?

ANSWER: Since passage of the Act in 1935, the public utility and investment banking industries, the accounting profession, and systems of state utility regulation have changed dramatically. In addition, an entire scheme of regulation under the Securities Act of 1933 and the Securities Exchange Act of 1934 has evolved, resulting in securities markets that are far more efficient and well-informed than those existing in 1935. Because of these changes, the SEC feels that the abuses prompting the Act's passage are unlikely to recur. Moreover, the Act's primary objective of reorganizing gas and electric holding companies was achieved 20 years ago.

Despite the Act's obsolescence, it continues to subject certain utility holding companies to pervasive regulation. These regulations require the Commission to review such business decisions as the form and substance of the subject companies' financing decisions, their geographic expansion, or their plans for diversification.

These regulations are not imposed on the companies' competitors. The Commission believes that it is unnecessary for it to question the internal business decisions of the 13 public utility holding companies that remain subject to the Act. For these reasons, the Commission continues to support the Act's repeal.

ENFORCEMENT PROGRAM

QUESTION: The General Accounting Office issued a report concluding that staffing in the Enforcement Program of the SEC has declined by 3.6 percent since 1979, compared to a 1 percent decline for the SEC as a whole. Does this indicate that enforcement has a lower priority than other Commission programs?

ANSWER: No, enforcement is a top priority. While the GAO report covered 1977-1983, a better measure of the importance of enforcement to the present Commission is the 1981-83 time frame. While the overall staff declined 3.1% between 1981 and 1983, the Enforcement Division declined only 1%.

More important is the fact that the annual volume of enforcement cases has been increased by 57% since 1981.

1986 PAY CUT

QUESTION: The SEC budget includes a cut of $2.9 million to reflect the proposal to reduce Federal pay by 5 percent. If Congress does not enact the pay cut, but decides not to add these funds to the SEC appropriation, how will you absorb this reduction? Will you reduce staffing, and if so, by how much?

ANSWER: If Congress does not approve the cut and funds are not restored, the SEC would be forced to reduce the staff by 95 positions. Absorption in other non-staff areas would be difficult, due to the $3.4 million reduction already proposed in such expenses; $1.3 million of unfunded rate and price increases; and $2.1 million in equipment and other administrative reductions.

The Commission assumes that a Congressional denial of the pay cut would result in OMB gathering the necessary cost data in the same manner it has gathered pay increase information in the past, for inclusion in an omnibus pay supplemental. The SEC would supply the necessary data to OMB.

INTERNATIONALIZATION

QUESTION: With increasing sophisticated telecommunications technology, there seems to be an irreversible trend towards increasing internationalization of the world's securities markets. Do you share this view and, if so, what steps is the SEC taking to address this phenomenon?

ANSWER: Yes. The U.S. has been a primary beneficiary of foreign investment.

With a view to facilitating the international mobility of capital, the Commission has issued for public comment two releases regarding multi-national public offerings and the trading in so called "world class" issues.

The first release solicits comments on ways to harmonize disclosure and distribution practices for such offerings in the United States, the United Kingdom, and Canada - through common prospectuses or reciprocal agreements.

The second release solicits comments on the structures necessary for an efficient international market, clearance and settlement system, and the problems of international regulation and surveillance.

IMMOBILIZATION OF SECURITIES CERTIFICATES

QUESTION: You have recently called for the increased immobilization and, where possible, elimination of securities certificates. Why is this an important goal and what plans do you have to achieve it?

ANSWER: Immobilization will save investors, who ultimately bear the costs of printing and transferring securities, hundreds of millions of dollars annually; but even in the absence of such savings, the future paperwork and other problems avoided, will more than justify the effort.

The reaction to the effort has been very encouraging. The Treasury announced on February 22nd, that next year all future issues of Treasury securities will be on a book-entry basis. The Commission recently hosted public workshops to discuss accelerating the immobilization and ultimate elimination of securities certificates. Workshop participants explored recent developments in the issuance of uncertificated or "book-entry" securities, discussed current obstacles to full immobilization and book-entry securities, and set an agenda to foster further certificate immobilization and, where feasible, certificate elimination.

The Division of Market Regulation is preparing a public report on workshops, which should be available in May 1985.

GOVERNMENT SECURITIES

QUESTION: On March 21, 1985, the Telecommunications, Consumer Protection and Finance Subcommittee of the House Energy and Commerce Committee requested the SEC to review the regulatory structure of government securities markets in consultation with the Treasury and the Federal Reserve Board. What is the status of that review?

ANSWER: SEC staff have met with Chairman Paul Volker of the Federal Reserve Board, Secretary of the Treasury James Baker, and members of their staff.

The SEC has issued a release to ascertain from dealers in government securities, investors, regulators and others the reaction of the marketplace to the highly publicized ESM and BBS failures, and opinions as to which option for regulating government securities would prove most effective and efficient.

The most knowledgeable sources will be requested to participate in a May 22nd open meeting. Based on information gained through the release, the open meeting, and consultations with Treasury and the Fed, the Commission will attempt to quantify the costs and benefits of the alternatives and report its conclusion to Congress by June 21, as specified by the House Committee.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

AUTHORIZATION BILL

QUESTION: What is the status of your authorization?

ANSWER: The SEC's fiscal 1986-1988 authorization request was submitted on March 1st.

The House oversight subcommittee held hearings on March 21st and the Senate Securities Subcommittee, on April 17th.

The Commission is seeking authorization of $113.6 million for 1986, $116.0 million for 1987, and $121.8 million for 1988.

These levels anticipate certain legislation, personnel cost increases, and the need to update the Commission's mainframe computer.

QUESTION: The Banking Committee has asked that we not consider your appropriation until the authorization is enacted. Is there something that the SEC is withholding that is delaying the authorization bill?

ANSWER: No, the Commission is not withholding anything that would in any way delay the authorization bill.

FULL DISCLOSURE

QUESTION: The Bush Task Group on Regulation of Financial Services has proposed consolidation within the SEC of the filings of all publicly-owned banks and thrifts. What would be the impact on the full disclosure program if these proposals were enacted?

ANSWER: Thirty-eight positions would be needed primarily to receive and review registrations and other filings by the banks and thrifts.

If the proposals are enacted, 980 bank and 57 savings and loan holding companies would become subject to the Commission's filing requirements under the 1934 Act and the 1933 Act. Specifically, it is estimated that the proposed legislative changes would result in: 1,037 additional annual reports; 3,111 additional quarterly reports; 1,037 additional proxy statements; 37 additional new issuer 1933 Act registration statements; and 100 additional repeat issuer 1933 Act registration statements. This increase in filings would necessitate the addition of two branches in the Division of Corporation Finance consisting of 34 people. An additional 2 staff members would be needed in the Public Reference Room, and one more staff member would be needed in the Office of Applications and Reports Services. Because of an increase in the number of financial institutions filing with the Commission and the complexity of these filings, the Office of the Chief Accountant would need an additional staff member. It should also be noted that the activities of these filers in all likelihood will generate an enforcement workload in the outyears.

Currently, the four bank regulatory agencies have 87 staff engaged in disclosure activities at a cost of $3.5 million.

QUESTION: Recently we had the situation in Ohio where the banks were closed because they invested in a company that went bankrupt. In defense of the banks, they were relying on an audit that was fraudulent. However, is there anything we should be doing legislatively, or by regulation, to protect depositers?

ANSWER: The issue of what can be done to protect investors is the subject of an intensive study currently being undertaken by the Commission, in consultation with the Treasury Department and the Federal Reserve Board. As part of that effort, the Commission has recently issued a release seeking comments from those who deal in government securities, investors, regulators and others concerning the costs and benefits of alternative methods of regulation. An open meeting, in which the most knowledgable sources will participate, has been scheduled for May 22, 1985. Based on information gained through the release, the open meeting and consultations with Treasury and the Federal Reserve, the Commission will make its full recommendations to the Congress in June. It is premature to anticipate any recommendations at this stage.

FRAUD

QUESTION: It seems reasonable, given the strength of the economic recovery, to anticipate that an increase in fraudulent activities will occur in the market place. Yet, your budget submission requests no additional staff for this activity. How will the SEC handle any increased workload in this area?

ANSWER: Economic recovery does not necessarily increase fraud; however, careful case selection, close cooperation with self-regulatory organizations and the federal, state, and local enforcement agencies, and increased productivity will permit the staff to handle the enforcement workload.

The Commission will be selective and pursue those cases which involve more serious violations or which have a program impact warranting the use of its resources.

Where appropriate, the staff will refer cases to the stock exchanges, the National Association of Securities Dealers, or state and local authorities for appropriate enforcement or disciplinary action. The Commission is also attempting to increase the efficiency of its enforcement activities. For example, the recent installation of microcomputers and the development of new computer programs will provide needed assistance in labor intensive efforts, such as analyzing data concerning broker-dealer transactions and telephone records.

PUBLIC UTILITY

QUESTION: The staff of the Office of Public Utility has gone from 17.1 staff years in 1984 to 6.0 in 1985 and 0.0 in 1986. What has happended to the staff of this office?

ANSWER: A management study indicated the Public Utility Regulation staff could be reduced to reflect a marked decline in the Office's workload. For example, the number of filings processed has dropped 54% since 1980. The Director and Associate Director of the office both recently retired. With the concurrence of its Assistant Director, the Office was merged into the Division of Investment Management. As a result, the Office's administrative officer was no longer needed and was transferred elsewhere in the Commission. In addition, it was determined that three financial analysts and the engineer in the Office could be best utilized by the Division of Corporation Finance. The staffing is eliminated from the 1986 budget request, because it is assumed that the Congress will repeal the Public Utility Holding Company Act of 1935.

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